

No. 16823

United States
Court of Appeals
for the Ninth Circuit

ESTATE OF WALTER F. RAU, SR., Deceased,
RAYMOND J. SHORB, Administrator With
the Will Annexed,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of Record

In Two Volumes

Volume II
(Pages 289 to 590)

FILED

JUN 14 1960

FRANK H. SCHMID, CLERK

Petition to Review a Decision of the Tax Court
of the United States

No. 16823

United States
Court of Appeals
for the Fifth Circuit

ESTATE OF WALTER F. RAU, SR., Deceased,
RAYMOND J. SHORB, Administrator With
the Will Annexed,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of Record

In Two Volumes

Volume II

(Pages 289 to 590)

Petition to Review a Decision of the Tax Court
of the United States

(Testimony of Robert R. Webb.)

Q. Did you cease your functions as clerk of the hotel after 1934, when the bar and cafe were opened by Mr. Rau?

A. Some time around, about that time, he said, put me in charge.

Q. In charge as what?

A. Well, he gave me—of the hotel, and Southern Wine and Liquor Company, the Southern Bar, not to do any hiring in the bar. I had nothing to do with the hiring of bartenders or any of the other help in there. Or I had nothing to do with hiring the help in the French Cafe.

Q. Well, what was the title of your position after 1934? [270]

A. Well, Mr. Rau gave me a title as manager.

Q. As manager. You got the receipts from the cafe after 1934, from the steward?

A. The steward or whoever was in charge in there, the cashier.

Q. Thank you. After 1934, you took the cash from the bar out of the cash register?

A. That is correct.

Q. Now, for how many years subsequent to 1934 did you continue to do those things, those two things that we just talked about?

A. Up until the hotel was demolished.

Q. Do you recall the date on which the hotel was demolished?

A. It was on August, '47, I think it was around the 6th, 7th or 8th.

Q. This that you have just explained, you did

(Testimony of Robert R. Webb.)

consistently from 1934 up until the date that the hotel was demolished some time in August of 1947?

A. Every day that I was there at the hotel; yes, sir.

Q. Was there anything else in addition to this that you did?

A. Well, I took charge of the bellboys, the other clerk.

Q. Now, just a minute. Took charge of the bellboys [271] and clerk, explain what you mean by "took charge of"?

A. Well, I would hire them and I would have the privilege of firing or hiring them.

Q. Did you hire or fire any other employee of the hotel?

A. Maybe a maid or maids, something like that, I might have.

Q. Maybe a maid?

A. Well, we had several maids. Might have had authority to hire any of them.

Q. While you were acting as manager, did you have anything to do with the receipts of the hotel?

A. Yes; I did.

Q. What did you have to do with the receipts of the hotel?

A. I would take the receipts, the same as I did the other accounts.

Q. Now, you worked from 7:00 o'clock in the morning until 7:00 o'clock in the evening; is that correct?

(Testimony of Robert R. Webb.)

A. For a period of time, I would take two hours off at noon, probably from 12:00 to 2:00.

Q. For a period of time?

A. Two hours—excuse me.

Q. After 1934, please state the number of hours you worked each day. [272]

A. Well, actually, I worked ten hours a day, up until maybe 1944 or '45.

Q. Now, there was a change then, was there not, after 1945?

A. About 1944 or 1945, I was carried to the hospital on a stretcher, and I was out probably a week or ten days.

Q. In what month?

A. I don't recall the month, but during that time, I was out.

Q. Wait a minute. Before you answer that, you were out for a week or ten days in some time in 1945?

A. '44 or '45, I don't recall the year.

Q. You were taken out on a stretcher and taken where?

A. To the Mercy Hospital.

Q. The emergency hospital?

A. Mercy Hospital.

Q. Mercy? A. Yes, sir.

Q. During that week or ten days, do you know who performed your duties?

A. I understand Miss Goldstein.

Q. You are unable now to recall whether it was 1944 or 1945? A. I don't remember. [273]

(Testimony of Robert R. Webb.)

Q. Would you care to state the nature of your illness?

A. Well, that morning I went to the bank and I couldn't pick up a pencil, so I sat down awhile, and rested. I thought I would be all right, and I went to the bank as usual.

I came back and I felt very weak, sat down in a chair, and I believe Miss Goldstein noticed. Some guests came up to the counter, and I couldn't get up.

So they took me to my room and called a doctor. And the doctor ordered me in the hospital.

Q. And you never learned the nature of your illness?

A. Well, I think it was a slight stroke on my right side, was——

Q. Was that because of overwork, did the doctor say?

A. Well, I don't remember the doctor saying anything about it.

Q. Did they recommend anything for you?

A. Shortly before that, I think it was the time when they had these new wonder drugs, and I had a cold, and Mr. Rau said take some of these pills, take one, maybe every hour. So I took them home and I took them every hour. And he called me up at my home, and he said, "Don't take any more of those pills. I told you wrong," he says that should be every four hours. Whether that had [274] anything to do with it, I don't know.

(Testimony of Robert R. Webb.)

Q. Well, did you ask the doctors if that had anything to do with it?

A. I don't remember. I was in pretty bad shape there for a couple days, and I don't recall what went on with the doctors.

Q. Did you explain that to the doctors at that time? A. I probably did.

Q. What was their answer?

A. I don't remember.

Q. You don't remember? A. No.

Q. Were there any other duties as manager of Southern Hotel over and above that which you did for the bar, and the taking the cash from the steward at the cafe?

A. Well, just to see that it was order kept in the hotel, and the hotel was kept clean and check on the maids, and the other clerks. That is about all.

Q. How many hours a day did you devote to the management of the hotel?

A. Well, it was ten hours a day, from up until 1944 or '45, and after that, I would go in and work around 9:00 o'clock, 10:00 o'clock in the morning, and probably stay until 5:00 in the afternoon. Maybe 5:30, 6:00, no special time. [275]

Q. So, you worked ten hours a day at the hotel?

A. Practically ten hours; yes, sir.

Q. How much time did you devote to the bar, and the cafe?

A. Well, very little time to the cafe. In fact, I didn't have anything to do with the cafe. The bar,

(Testimony of Robert R. Webb.)

I would go back and forth, but no special hours or anything like that.

Q. Nothing to do with the cafe?

The Court: You mean apart from receiving the cash?

The Witness: Yes, sir, your Honor.

Q. (By Mr. Simpson): During the time that you were obtaining or receiving the receipts from the cafe, you received daily receipts from the steward, did you? A. Yes, sir.

Q. And also the cash, at the same time?

A. Yes, sir.

Q. When you received the daily sheets from the cafe, you took a deduction from those receipts, did you note the amount of the deduction on the day which you received that daily sheet from the steward of the cafe?

A. Well, \$10 a day every day in the week.

Q. Wait a minute, now. I don't want to interrupt you. At the time you received the daily sheets from the [276] steward of the cafe, along with the cash, did you or did you not on that same day write down on the sheet the amount taken off?

A. Well, I wrote down the amount taken off. I might have—take it off of the total receipts, but I would take off \$10 anyway, every day.

Q. Are you through, sir; is that your answer?

A. Yes, sir.

Q. I ask you, at the time you received the daily sheet from the steward at the French Cafe, along with the cash, did you, or did you not, on that same

(Testimony of Robert R. Webb.)

day, write down on the daily sheet the amount of money taken off the top, as you say?

A. I would take off \$10 a day. Might have been occasions where Mr. Rau would say take the \$10 off the total receipts.

Q. Mr. Webb, I know that I don't want to interrupt you. I have asked that same question twice. You have yet to answer it. A. Yes. Then——

Q. The answer is yes, you put it, wrote it down on the same day that you received the daily sheet from the [277] steward?

A. Same day; yes, sir.

Q. All right. Sir, did you write anything else down on those daily sheets at that same time, other than the amount taken off?

A. I would probably deduct the supplies from the total.

Q. You say deduct the supplies from the total. Did I understand that answer correctly?

A. Yes, sir.

Q. Did you write anything else?

A. I don't remember that I wrote on them now, unless I could see the sheet.

Q. I will ask you, did you add anything?

A. At times, I would. Mr. Rau would have me add a check to it, to make it respectable, what he thought would be a respectable figure.

In other words, after we get through deducting, we had \$250, he might have me write out a \$50 check to make it over \$300.

(Testimony of Robert R. Webb.)

Mr. Simpson: Would you mark this group of papers Petitioner's Exhibit next in order.

The Clerk: Petitioner's Exhibit No. 20 marked for identification. [278]

(The documents above referred to were marked Petitioner's Exhibit No. 20 for identification.)

Q. (By Mr. Simpson): Mr. Webb, I show you Petitioner's Exhibit—just a minute, sorry. Strike that from the record.

Mr. Webb, I show you Petitioner's Exhibit 20 for identification, and ask you if you can identify No. 10 appearing under \$283.60?

The Court: Showing him the front sheet for that exhibit.

Mr. Simpson: Yes.

Q. (By Mr. Simpson): Bearing date of September 20, 1943, and ask if that \$10 underneath that figure, below that figure, is written by you?

A. It was.

Q. The balance then becomes \$273.86; is that correct? A. Yes, sir; that is correct.

Q. Now, there is the sum of \$33.35, which is added to that result, making the total of \$307.21.

A. That is correct.

Q. My question is, explain the \$33.35, which you added to \$273.86. [279]

A. Well, after the deductions, there were \$273.86. I may have checked out \$33.35 to make the total deposit \$307.21.

(Testimony of Robert R. Webb.)

Mr. Rau would say, "Make a check out for supplies;" on the stub you will find supplies, to make it over \$300 deposit. In other words, he wouldn't want to put in just \$273, he would make out a check for \$33.35 to make it look a little better, make it bring it over \$300.

Q. So, he deposited a check for \$33.25 after taking \$10 in cash out?

A. I would make the check out and cash it and add that onto the deposit, to make it from \$273 to \$307.

Q. You drew—I don't want to interrupt you—you drew a check for \$33.35?

A. That is right.

Q. And then you cashed that check?

A. I would cash it and deposit to \$307, instead of \$273. And I would call this, he would have me make out a check for \$33.35 and mark it supplies.

Q. Well, if the check were marked supplies for \$33.35, please explain how it was that you could add it to the total receipts and have a deposit of \$307.21?

A. \$307.21 was a deposit made as the receipts for that day; instead of deposit of \$273, we made it \$307. And Mr. Rau would instruct me to make out the check for, to [280] bring the amount over \$300.

Q. Well now, Mr. Webb, if the check for \$33.35 represents supplies, please state how it could be added to receipts to become a part of the total deposits?

(Testimony of Robert R. Webb.)

A. All I did was follow instructions on this. I didn't have anything to do with the bookkeeping. What the bookkeeper did, I don't know. This would be given to the bookkeeper, and she would have the amount of supplies taken off that day.

Q. Well, the bookkeeper didn't have anything to do with writing that \$33.35 on that paper?

A. No, but she would get this after I finished the deposit.

Q. You wrote the \$33.35 on there, showing the addition?

A. That is right. I was told to, instead of deposit, otherwise we would have deposited \$273. So, the \$33 brought it over \$300, which made the deposit look better in Mr. Rau's eyes.

Q. Now, we have this then, you correct me if I am wrong, in what you said, we have Mr. Rau instructing you, as you say, to take off \$10 a day. On this particular day, September 20, 1943, he now instructs you to add \$33.35, just to make the deposit look good, which has the effect now of adding \$33.35 to receipts that he actually did not [281] receive for that day, just to make the deposit look good.

A. The actual receipts for that day were \$384.17.

Q. What was that, Mr. Webb?

A. The actual receipts for that day were \$384.17.

Q. Less what?

A. Less \$100.29 paid out, which is this.

Q. Yes. Who wrote these figures?

(Testimony of Robert R. Webb.)

A. That was written by the steward, or the cashier in the restaurant.

Q. So, the items comprising the \$129 were all identified and written in someone else's handwriting at the French Cafe?

A. We would have vouchers to show for all this.

Q. Who had the vouchers?

A. It was brought in with the payout for this.

Q. Now, these items, now written in somebody else's handwriting, presumably the steward of the French Cafe——

A. Yes, sir.

Q. Merchandise, wages, what is this word?

A. Gunlite, that is the plumbing.

Q. Gunlite, laundry——

A. Aerated products.

Q. Aerated products, did you say?

A. It looks like that. I don't know.

Q. That is not important. Chicken, produce, oranges, [282] pies, creamery——

A. Langendorf bread.

Q. Langendorf bread?

A. French bread.

Q. French bread and golden crust wheat bread?

A. That is right.

Q. They total \$129, and they are subtracted from \$384.17. That leaves a total cash of \$283.86; is that correct?

A. That is correct.

Q. Now, this is where your handwriting comes in, \$10 deducted from \$283.86, leaving \$273.86?

A. Yes, sir.

(Testimony of Robert R. Webb.)

Q. Now, a sum of \$33.35 is added to that to bring a total of \$307.21?

A. Yes, sir.

That was the amount of the deposit that was made in the bank.

The Court: Now, the \$33.35, \$33.25——

Mr. Simpson: Thirty-five cents, your Honor.

The Court: Thirty-five cents, you have testified represented cash which you obtained by cashing a check?

The Witness: I would make out a check, your Honor, for \$33.35. On the stub I would put supplies.

The Court: So the stub of that check then would [283] indicate that the French Cafe had purchased supplies in the amount of \$33.35?

The Witness: Yes, sir.

The Court: I suppose then that for, if that \$33.35 were reflected on his returns as an additional supplies purchased, that would offset the increase in receipts that are shown on the first page of Exhibit 20, for that particular day, so that it would be an artificial entry that would just be neutralized by corresponding deduction for supplies purchased.

Q. (By Mr. Simpson): Mr. Webb, I ask what is your explanation for the \$33.35?

A. Mr. Rau would ask me to, always have me make out a check to make a respectable figure to put in the bank. Otherwise, I wouldn't deposit \$273.86. I don't know how the bookkeeper handled this other. I had nothing to do with that.

Q. I want to keep on that \$33.35, Mr. Webb.

(Testimony of Robert R. Webb.)

A. Well, that is what I am trying to tell you.

Q. It was added to the receipts after deducting the \$10? A. Yes, sir.

Q. Now, if we understand simple arithmetic, he has deposited \$23.35 more than he subtracted; is that correct? [284] A. He added on \$33.35.

Q. Would you answer the question; is that correct?

A. You are asking me if that was the \$33?

Q. I am just going to ask you now, and I don't want to interrupt you.

The Court: I think I understand your question, Mr. Simpson, but I don't think the witness does. I suggest you rephrase it.

Mr. Simpson: All right.

Q. (By Mr. Simpson): I ask you to take that sheet right before you, September 20, to determine and tell me whether or not the figures, the total net figures show a deposit of \$23.35 more than was actually deducted?

A. It shows more; yes, sir.

Q. Now, will you add the figures and put it in the record how much more it is for that day?

A. The total deposit that day was \$307.21. What was left after deductions was \$273.86. \$33.35 added on.

Q. Mr. Webb, I will put it to you, after taking into account the \$10 which you deducted in the receipts and considering the \$33.35 actually added back to receipts, how much more has been de-

(Testimony of Robert R. Webb.)

posited as receipts? A. \$33.35.

Q. Less— [285] A. The \$10.

Q. So that means how much more was deposited; what is the net difference?

The Court: The Court can do the—

The Witness: \$33.35.

Q. (By Mr. Simpson): More that day?

A. Yes.

Q. That is what I wanted to get from you.

The Court: Mr. Webb, did that happen very often?

The Witness: Yes, sir.

Mr. Simpson: Now, if your Honor please, that happened quite often, and I can assume a lot of time in doing this, which I will do, if I have to, of course.

I want to show you Respondent's Exhibit M. These are photostatic copies of these.

Q. (By Mr. Simpson): In order to establish that for the record, I ask you to look at a daily sheet dated September 25, 1943, which is part of Petitioner's Exhibit 20 for identification, and ask you to refer to both of them now, see whether or not they are identical, if this Respondent Exhibit—

A. They are identical.

The Court: What are you comparing it with, Mr. Simpson?

Mr. Simpson: The Respondent's Exhibit M.

The Court: Which sheet in Respondent's Exhibit M?

(Testimony of Robert R. Webb.)

Mr. Simpson: Sheet dated September 25, '43, and labeled S-8. That is identical.

I would like the record to show that that is the first sheet submitted by the Respondent in connection with the withholding, that the first date appearing on the sheets in Petitioner's Exhibit 20 for identification is September 20.

Now, let's see. I will get to it faster this way.

Q. (By Mr. Simpson): S-10, tab number on Respondent's Exhibit M, that is the date of November 17, 1943; Mr. Webb, I ask you to refer to Petitioner's Exhibit No. 20 for identification, the daily sheet of the French Cafe. A. Yes, sir.

Q. Dated Wednesday, November 17, 1943. I ask you to show where any amount was subtracted as take-offs?

A. Well, probably \$10 taken off the total receipts.

Q. Your Counsel has indicated to you where you might find your answer by looking on the reverse side.

A. No, no. I know that probably some others the same way.

Q. I ask you to look, the handwriting, is that your handwriting on the reverse side of this [287] sheet? A. No, that isn't.

Q. That is not your handwriting, is it?

A. I don't believe so.

Q. Now, do you know whose handwriting that is, Mr. Webb? On the reverse side.

A. No, I don't, no, sir.

(Testimony of Robert R. Webb.)

Q. On the reverse side of the daily sheet dated November 17, 1943, of Petitioner's Exhibit 20 for identification, you do not know whose signature that is?

I ask you to refer to sheet dated November 19, 1943, of Petitioner's Exhibit 20 for identification, and ask you to tell the Court where you see a deduction in any amount for that day?

A. I don't see any in there. That is not my writing.

The Court: How do you explain the fact that there wasn't \$10 recorded on that sheet as having been deducted?

The Witness: Well, I was, evidently wasn't there that day, and Mr. Rau might have, whoever took it off, might have taken the cash. Probably had taken it off the total receipts, is the only way I can explain it, the only way I can explain it, because I wasn't there that day.

Q. You weren't there that day? [288]

A. It is not my writing.

Q. If you were there, you definitely would have marked it down?

A. Not definitely, I might have taken it off the total receipts, if Mr. Rau was standing there, instead of 625, might put down 615.

Q. I haven't covered this. I ask you to look at sheet dated November 20, 1943, being the original sheet of the French Cafe, and part of Petitioner's Exhibit 20 for identification, and ask you to explain to the Court the deduction, if any, on that day.

(Testimony of Robert R. Webb.)

A. Well, \$110 with \$470.25, and \$110, which left a balance of \$360.25.

Q. That is more writing?

A. That is Consumers Meat Company, \$99.40, by check.

Q. Did you write that? A. No, sir.

Q. There is another item, \$10.50 return from Rose. A. That is not my writing.

Q. Was that considered in the——

A. Well, I don't recall. It is 1943. I haven't any idea what it is.

Q. \$10.50 return from Rose. Do you know what that means? A. No, sir. [289]

Q. Can you explain it?

A. I can't explain it. I can't remember.

Q. Can, you cannot explain it.

Do you recognize the handwriting, \$10.50, return from Rose? A. No, sir.

Q. You do not recognize that handwriting?

A. No, sir.

Q. I ask you to look at daily sheet dated November 22, 1943, part of Petitioner's Exhibit 20 for identification, and ask you to identify the number 10 appearing below 2/29/39.

A. This would be my writing, 10 and this.

Q. Is this all of your writing, the 10?

A. Ten, yes.

Q. And the 1939? A. Yes, sir.

Q. I ask you to look at sheet number, dated November 24, 1943, being part of Petitioner's Exhibit 20 for identification, and ask you to explain

(Testimony of Robert R. Webb.)

the deduction, if any, claimed for that day, for the taking off.

A. That is not my writing, so I don't have any idea what it is.

Q. Is there any deduction for that day?

A. The total receipts reading of the cash register [290] was \$398.07, and \$1.50 tickets, receipts \$396.57; paid out, \$175.52; left the bank with \$221.05.

Q. Is there a figure of 10 subtracted from those receipts for that day? A. No, sir.

Q. Would you please explain why there was no deduction on that day?

A. Well, whoever handled the cash that day, Mr. Rau would probably have them take it off the total receipts.

Q. You weren't there that day?

A. I wasn't there. I don't remember.

Q. You weren't there?

The Court: You mean the figure appearing opposite the word reading, namely 398?

The Witness: 07.

The Court: And 07.

The Witness: I don't—

The Court: All are represented a subtracted amount of \$10?

The Witness: That is the only way I can interpret this, your Honor. It is not my writing. I evidently wasn't there that day.

Q. (By Mr. Simpson): I ask you to look [291] at—

A. That would be the same.

(Testimony of Robert R. Webb.)

Q. Sheet dated November 25, 1943, being part of Petitioner's Exhibit 20 for identification, and ask you to explain the deduction, if any, for that day?

A. The only deduction is the \$41.60, for paid out.

Q. Not the \$10 a day that you have testified to previously?

A. No, that is not my writing.

Q. But there was no deduction on that day?

A. Not on that sheet.

Q. And you were not there that day?

A. Evidently not.

The Court: Would you come back to that day again?

Mr. Simpson: November 25, 1943?

The Court: November 25. What was the total amount of receipts at the bottom of that page?

The Witness: \$559.09.

The Court: Now, I notice underneath that there appears to have been some writing in pencil that was erased, and the erased writing appears to be visible.

The Witness: It looks like——

The Court: To my eye, the erased writing looks like \$110. Would you so interpret that? [292]

The Witness: Yes, sir, it looks like——

The Court: And that, that in turn, has been subtracted from the word "bank" of \$559.09, and is there still further an erased item at the very bottom of that page, which is legible?

The Witness: Yes, sir.

The Court: What is that?

(Testimony of Robert R. Webb.)

The Witness: \$449.09. Looks like it is blurred over.

The Court: Well now, I have before me Respondent's Exhibit O, and ask you to turn to the entries for Thursday, November 25, 1943, and is that in your handwriting?

The Witness: Yes, sir.

The Court: What is that?

The Witness: \$449.09.

The Court: Well, would that—what conclusion do you draw then from this entry on Exhibit O for the date of November 25, and the entries on the page relating to November 25, in Exhibit 20?

The Witness: Well, there is \$110 taken off here. I don't know how that—I don't believe it was erased. It looks like a smudge, which leaves \$449.09, which was the same as the—which was the deposit for that day.

The Court: Well then, is it your interpretation that \$110 had been taken off? [293]

The Witness: Yes, sir, your Honor.

The Court: For that day?

The Witness: Yes, sir.

Q. (By Mr. Simpson): Now, the blurred writing that you have just referred to is in your handwriting? A. Yes, sir.

Q. What would be the purpose of having such a blurred handwriting?

A. I haven't any idea.

Q. Or erasure?

A. It hasn't been erased. Pencil or something like that, dark pencil.

(Testimony of Robert R. Webb.)

Q. In other words, you do not believe it was an attempt to erase that?

A. No, I don't. That was actual deposit; that would have to be that way.

Q. Now, looking at the next sheet, dated November 26, 1943, of the same exhibit for identification, I ask you to now to tell the Court where there is a deduction for \$10 or any other amount?

A. No, sir.

Q. And the reason?

A. I don't know. I wasn't there that day.

Q. Not there on 26th of November. [294]

I ask you to refer to the next sheet in chronological order, being November 27, 1943, to tell the Court—

The Court: Will you turn back to the entry on November 26? What was the amount of the total shown on that?

The Witness: \$423.51.

The Court: What was the total net amount?

The Witness: The net was \$270.74.

The Court: What amount did you show as having been received in Exhibit O, for that day, on November 26?

The Witness: \$260.74.

Mr. Simpson: That would be—

The Court: That is the \$10 less than the amount appearing on Exhibit 20?

The Witness: Yes, sir; yes, sir.

Q! (By Mr. Simpson): But there was no notation or entry made on the daily sheet to reflect that?

(Testimony of Robert R. Webb.)

Well, the record speaks for itself. It isn't on there.

The Court: Does that mean that sometimes \$10 was, in fact, deducted, and not put down on the daily sheet?

The Witness: It could be; yes, sir. Mr. Rau might [295] say, "Well, take \$10 off the total reading, "because I know I had \$10 every day, as far as I can remember.

Q. (By Mr. Simpson): Let's go to November 27. Might as well keep that Exhibit O handy.

The Court: Would you like to have it?

Mr. Simpson: Yes. Sure, you can read it out just like you have been doing.

Q. (By Mr. Simpson): November 27, and ask you to show where, if at all, there is a deduction of \$10 on that day?

A. Doesn't show on the sheet; no, sir.

Q. By referring to Respondent's Exhibit O, on that same day, November 27, the receipts from the cafe of \$413.62—

A. Yes, sir.

Q. The amount shown on the daily sheet, \$573.62. The difference between that would be \$160?

A. That is right.

Q. And that is what you withheld on Saturday, November 27, 1943?

A. This is not my sheet, but whoever took this off, took off \$160 evidently. But didn't show it on the sheet is all.

The Court: But is Exhibit O in your handwriting? [296]

The Witness: This is in my handwriting.

(Testimony of Robert R. Webb.)

The Court: Exhibit O?

The Witness: That is right; yes, sir.

Q. (By Mr. Simpson): Well then, how did you know that, Mr. Webb, to take off \$160 on this day, if you didn't see this similar sheet?

A. Whoever took, they—this sheet off—gave me the \$150 or \$160 and didn't write it on here, didn't deduct it from here. That is all.

Q. Were they supposed to deduct it from the original daily sheet?

A. Not necessarily; not necessarily, no.

Q. Well, so that there is no mistake—

A. That is all right.

Q. Whoever was supposed to take off the \$160 didn't do it, I believe you said, but you did it, when you wrote it down in the day book for the French Cafe, for Saturday, November 27?

A. The day this sheet was made out, and I don't know what the date was, Saturday, I was not at the hotel. I wasn't there, or I didn't make the sheet out, but the money was taken off and given to me to put in the envelope, and I just made a deposit which was the actual deposit.

Mr. Simpson: If your Honor please, I would like [297] the record to show that the handwriting in the day book, Respondent's Exhibit O, dated Saturday, November 27, 1943, appears to have had another number or figure which have been written over by this witness.

The Court: I will state for the record that there appears to have been some other writing underneath the figure \$413.62, and that that writing ap-

(Testimony of Robert R. Webb.)

pears to have been erased, and the figure \$413.62 superimposed over the erasure.

I cannot tell by, at least by casual inspection what the erased figure was.

Mr. Simpson: Thank you.

Q. (By Mr. Simpson): Now, Mr. Webb, coming back to the daily sheets, calling your attention to the one dated September 21, 1943, more specifically, I direct your attention to the figure of \$61.30, appearing just below the figure of \$354.38, which we added to the figure preceding it, totals \$415.68, as reflected thereon, I ask you now, are those figures in your handwriting?

A. Yes, they are, sir.

Q. Please explain the purpose of the addition of \$61.30 to the figure of \$354.38?

A. After the \$10 was taken off, there was \$354.38. So, I was instructed to make out a check to bring it over \$300, so I made out a check for \$61.30, and called it supplies. [298]

Q. And if you made a check out for \$61.30 and called it supplies, how could you deposit that check?

A. Well, I could add it right on the receipts, I deposited \$415. I don't remember how the——

The Court: Did you deposit the check or did you cash the check?

The Witness: I don't remember. I probably cashed the check and made a deposit of \$415.

Q. (By Mr. Simpson): What account would you draw a check for \$61.30 to be added to that \$354.38?

(Testimony of Robert R. Webb.)

A. To make it respectable looking, deposit for that day.

Q. On what account did you draw the check?

A. On the French Cafe, French Cafe account.

Q. You drew a check on the French Cafe account for \$61.30 and added it just to make it look respectable after taking \$10 off?

A. I would be instructed to make a check out.

Q. Mr. Webb. I don't want you tell me what your instructions were. I asked you whether or not the \$61.30 increases the receipts for that day?

A. The \$61.30 increased the receipts for that day; yes, sir.

Q. Less the \$10 taken off? [299]

A. Yes, sir.

Q. So, the net increase of receipts for that day is \$51.30; it is a matter of arithmetic.

A. Yes, sir.

Q. We will agree on that? A. Yes, sir.

Q. I ask you to look at the daily sheet dated September 22, 1943, call your attention to the figure of \$25.30, added to the sum of \$308.13, and ask you if that is your handwriting?

A. Yes, it is. That would be the same as the other.

Q. Same preceding? A. Yes, sir.

Q. Daily sheet so that the net increase for the day is \$15.30 over and above the actual receipts; correct? A. Yes, sir.

Q. Thank you.

I call your attention to the daily sheet dated September 23, 1943, ask you whether or not the

(Testimony of Robert R. Webb.)

figure of \$10 appearing just below the sum of \$244.35 is your handwriting?

A. \$10 is my handwriting.

Q. And that was subtracted from the preceding figure? A. Yes, sir.

Q. Is that correct? [300] A. Yes, sir.

Q. Leaving a net figure of \$234.35?

A. Yes, sir.

Q. Now, below the figure of \$234.35 appears a figure of \$71.30, which obviously was added to the preceding?

A. To bring it over \$300; yes, sir.

Q. To bring it over \$300. The net receipts over that and above that which were received on that day is \$71.30, less \$10 for a net increase of \$61.30, over and above the actual receipts for that day?

A. Yes.

Q. I call your attention to September 24, that daily sheet dated September 24, 1943, ask you whether or not the figure of \$10 appearing just below \$306.10 is in your handwriting?

A. Yes, sir.

Q. Subtracting the \$10 from that figure gives the result of \$296.10? A. Yes, sir.

Q. Just below \$296.10 is an item of \$52.10, which would be, obviously from the result was added to the \$296.10? A. Yes, sir.

Q. Correct? [301] A. Yes, sir.

Q. You have the net increase for the receipts of that day over and above that which was taken out would be \$42.10? A. Yes, sir.

Q. In other words, you reported, Mr. Rau re-

(Testimony of Robert R. Webb.)

ported \$42.10 more than he actually took in, if these figures are correct?

A. He already took, he also took off \$139.36 which was actually paid out in cash from the restaurant from the total receipts.

Q. Just a minute now. He didn't take it off, it was subtracted by whoever the clerk was at the French Cafe, who put the figures down here for these various items, that total \$139.36, so Mr. Rau didn't take it off, did he? A. No.

Q. You didn't mean that, did you?

A. Well, I subtracted the paid out for that day, from the total reading is what I mean.

Q. That is proper, isn't it, nothing irregular with that, about that, is there?

Mr. Gardner: May the witness be allowed to answer this, your Honor? I think he still has more to say, Mr. Simpson. [302]

Q. (By Mr. Simpson): Do you have anything more to say?

A. I think the bookkeeper would take these figures which, when she got this sheet, she would probably take these supplies off of it, charge them off to the French Cafe.

Q. Is there anything irregular about that?

A. I don't know. I have no knowledge of book-keeping.

Q. You think she put in correct figures now?

A. I don't know how she handled that.

Q. Let's assume these figures now that you have brought it out, yourself, Pacific Freight for \$1.44; see that? A. Yes.

(Testimony of Robert R. Webb.)

Q. Anything irregular with respect to that?

A. No, sir.

Q. Wages, \$12.49? A. No.

Q. Anything that would arouse your suspicion?

A. No.

Q. Railway Express, 83 cents; anything there to rouse your suspicion?

A. No. What I was trying to get at is the total receipts that day for \$444.46.

Q. Yes. Now—— [303]

A. We made a deposit of \$348.20. How that was handled by the bookkeeper, of course, I don't have any knowledge of that.

Q. Do we have to discuss the bookkeeper with respect to these figures?

A. No, these are my figures.

Q. So, we will get a simple answer. Has not the receipts for September 24, 1943, been increased by \$24.10 over and above that actually reported, according to your records that you kept?

A. Yes, sir.

Q. Thank you.

Now, calling your attention to September 25, 1943, I ask you to refer to the figure of \$110 appearing just below the \$483.90, and ask if that is in your handwriting? A. Yes, sir.

Q. That is your handwriting, the \$110?

A. Yes, sir.

Q. That is subtracted from \$483.90, leaving the sum of \$373.90 as a balance; that is correct, is it not?

A. Yes, sir.

(Testimony of Robert R. Webb.)

Q. The figure immediately below that is \$27.20?

A. Yes, sir.

Q. Which is added to \$337.90, giving a total of \$401.10? [304]

A. Yes, sir.

Q. Are all those figures in your handwriting?

A. They are.

Q. Please explain the purpose for the addition of \$27.

A. \$20.20 is put in for supplies to bring it up to \$401.10.

Q. In other words, supplies are brought up?

A. Yes, sir.

Q. To that you now know, can deposit money in the bank? A. Yes, sir.

Q. Calling your attention to daily sheet dated September 27, 1943, for the French Cafe, I direct your attention to the figure of \$332.78, below which there is a sum of \$10 subtracted. Is that \$10 in your handwriting? A. Yes, sir.

Q. The net result of \$322.78 is in your handwriting also? A. Yes, sir.

Q. And there is an addition of \$32.15 to that figure? A. Yes, sir.

Q. Making a total of \$354.93? A. Yes, sir.

Q. Now, the addition of \$32.15 was added [305] for what reason, Mr. Webb?

A. Supplies, supplies.

Mr. Simpson: If your Honor please, you want me to go all the way through this, because the same thing is going to apply all the way down. I will be

(Testimony of Robert R. Webb.)

glad to do it, if it would be of any help to the Court.

The Court: It appears to be repetitive.

Mr. Simpson: Yes, it is. But I want to show the general pattern of the adding back of these figures.

The Court: Are you going to offer Exhibit 20 in evidence?

Mr. Simpson: Yes.

The Court: The exhibit will speak for itself, I take it.

Mr. Simpson: What I could do is have a schedule made up attached to it, showing the additions which would be of help, and of course, you could go from there. I am trying to save some time.

The Court: You wish to offer it now?

Mr. Simpson: Yes.

Mr. Gardner: No objection, your Honor.

The Court: It will be admitted.

(The document heretofore marked for identification as Petitioner's Exhibit No. 20 was received in evidence.) [306]

Q. (By Mr. Simpson): Very briefly, Mr. Webb, directing your attention to Petitioner's Exhibit 20, the items about which we have had discussions, that is the additions to the receipts are for supplies which have been added? A. Yes, sir.

Q. What was the source for which you obtained that information to arrive at the figure of \$33.35 as

(Testimony of Robert R. Webb.)

supplies over and above the items already set out by a clerk of the French Cafe?

A. Well, the supplies, the paid out for that day, cash pay out was \$100.29.

The Court: You are referring to what day now?

Mr. Simpson: September 20, 1943.

The Witness: Which left a bank balance of the bank of \$283.86. \$10 deducted from that made it \$273.86. I added \$33.35 to bring it back, the receipts for the bank at \$307.21.

Q. (By Mr. Simpson): Now, you added that—strike that.

You added that \$33.35 to the receipts?

A. Yes, sir.

The Court: And on that day was \$10 actually taken off and put in the envelope?

The Witness: Yes, your Honor. [307]

The Court: And put in the safe?

The Witness: Yes, your Honor.

The Court: In accordance with the practice that you had previously testified to?

The Witness: Yes, sir.

Q. (By Mr. Simpson): But the net result is that you reported \$23.35 more than you took in that day?

A. That was just to, as I was trying to say, to bring these, to bring our receipts for the day that would show, to bring it up over \$300, and make a respectable deposit.

Q. Yes. I mean, the sheets are now more——

A. And Mr. Rau would instruct me to make out

(Testimony of Robert R. Webb.)

a check. He wouldn't—sometimes he would say make it over \$300.

Q. Now, Mr. Webb, the daily sheet of the French Cafe for Monday, September 20, 1943, reflects, according to your figures, you had admitted receipts of \$307.21? A. That is right.

Q. I show you Respondent's Exhibit O, being a daily book, reflecting the receipts from the bar and the French Cafe, and ask you to give the figure of receipts reported for the French Cafe on Monday, September 20. A. \$307.21. [308]

Q. Now, that, of course, corresponds with the receipts that you show for the French Cafe on September 20, 1943? A. It does.

Q. Actually, \$23.35 more than that was taken in that day, after making allowance for the \$10 which you deducted?

A. The total receipts that day were \$384.17. The money I received was \$283.86. Then I took off the \$10 which left the balance of \$273.86. I added on \$33.35, which left the deposit for, the deposit for \$307.21, the same as——

Q. Which you reported as receipts?

A. Yes, sir.

Q. For the cafe? A. Yes, sir.

Q. Now, I don't want to interrupt you, and you didn't answer my question; give you another chance at it.

The Court: I think you are arguing with the witness. I can do the arithmetic, Mr. Simpson.

Mr. Simpson: I want to make him admit it.

(Testimony of Robert R. Webb.)

Q. (By Mr. Simpson): Mr. Webb, I direct your attention to the daily sheet of the French Cafe dated September 21, 1943, being Petitioner's Exhibit 20, in evidence now, direct your attention to the sum of \$61.30 appearing immediately below the sum of \$354.38, and ask you if that is in [309] your handwriting? A. It is.

Q. And was that \$61.30 added to this \$354.38?

A. Yes, sir.

Q. Giving what total? A. \$415.68.

Q. Now, I show you Respondent's Exhibit O, being the receipts for the bar and the French Cafe, direct your attention to the date of Tuesday, September 21, and ask you to state what the receipts were reported for that day? A. \$415.68.

Q. Corresponds exactly with the receipts appearing in the original sheet of the French Cafe on the same day? A. Yes, sir.

Q. Which we considered in connection with the \$10 subtracted by you, increases the receipts that day by \$51.30 over and above that actually received?

A. Yes, sir.

Mr. Simpson: I have more along the same, just going to be a repetition, but maybe for the record it should go in.

The Court: The exhibit also is in evidence, and I can compare them, myself.

Mr. Simpson: Then I think this is a good stopping place for lunch. [310]

The Court: Very well. We will recess until 2:00 o'clock.

(Testimony of Robert R. Webb.)

(Whereupon, at 12:50 o'clock p.m., the hearing in the above-entitled matter was adjourned until 2:00 o'clock p.m. the same day.)

Afternoon Session—2:00 P.M.

The Clerk: For the record, petitioner's Exhibits 21, 22, 23 and 24 marked for identification.

(The documents above referred to were marked Petitioner's Exhibits Nos. 21, 22, 23, and 24 for identification.)

ROBERT R. WEBB

resumed the stand, having been previously duly sworn, was examined and testified further as follows:

Cross-Examination

(Continued)

By Mr. Simpson:

Q. Mr. Webb, I show you Petitioner's Exhibit 21 for identification, and call your attention to sheet dated January 5, 1944, and ask if the figure of \$10 appearing directly under \$216.82 is in your handwriting? A. That is right.

Q. That \$10 is subtracted from the——

A. Yes, sir.

Q. ——preceding figure, result is \$206.82?

A. Yes, sir.

Q. And right below that figure of \$206.82 appears a figure of \$62.30? A. Yes, sir.

Q. That is added, is it not, to \$206.82?

(Testimony of Robert R. Webb.)

A. Yes, sir. [312]

Q. In that connection, I show you Respondent's Exhibit N, being the year book for the French Cafe, and the bar, for the year 1944—is that correct, 1944?

A. That is '44. I don't know.

Q. '44. I direct your attention to the entry appearing on Wednesday, January 5, the date appearing in that date book is 1938, and this particular book was used to record the receipts for 1944. Do you know whether or not that is right, Mr. Webb?

A. I don't remember the book. I don't remember.

Q. Then I ask you this, the entries appearing under date of January 5, 1938, in the amount of \$269.12, is that in your handwriting?

A. Yes, it is, sir.

Q. That corresponds, does it not, to the figure appearing on the daily sheet for the French Cafe?

A. Yes, sir.

Q. \$269.12. Taking these figures, the subtractions and additions, the net result is that the sum of \$52.30 has been added to the receipts over and above the actual receipts for that day?

A. Yes, sir.

The Court: May I see, Counsel?

(Discussion off the record.)

Mr. Simpson: If your Honor please, Petitioner has many more items similar to that, which we have been [313] reviewing with this witness. Counsel for Respondent has indicated willingness to

(Testimony of Robert R. Webb.)

stipulate to the rest of these items, and with that in mind, I request a short recess for that purpose.

The Court: We will have a recess and you notify the Clerk when you are ready to present your stipulation.

Mr. Simpson: Now, your Honor, may I offer in evidence Petitioner's Exhibits 21, 22, 23, being the day sheets for the French Cafe, for the years 1944, '45 and '46, respectively; and 24 being the day sheets of the French Cafe for the years 1944, '45 and '46 and '47, respectively.

The Court: Do these purport to be the complete set of sheets for each year?

Mr. Simpson: They are not complete sets but they are the only records that are available.

The Court: Mr. Gardner.

Mr. Gardner: No objection.

The Court: These exhibits will be admitted.

(The documents heretofore marked for identification as Petitioner's Exhibits Nos. 21, 22, 23, and 24, were received in evidence.)

The Court: There will be a recess, and when Counsel notify the Clerk that their stipulation is ready the Court will reconvene.

Mr. Simpson: Fine. Thank you. [314]

(Short recess.)

The Clerk: Recess until 10:00 o'clock tomorrow morning.

(Testimony of Robert R. Webb.)

(Whereupon, at 4:00 o'clock p.m., the hearing in the above-entitled matter was recessed until 10:00 o'clock a.m., Tuesday, July 1, 1958.)

Mr. Simpson: If your Honor please, we have stipulated with respect to the additions and deductions of the daily sheets of the French Cafe, as to what the witness Mr. Webb would testify to. That is a stipulation of facts, B.

Off the record.

(Discussion off the record.)

The Court: The stipulation will be received.

This is a stipulation as to what the witness would have testified to.

Mr. Simpson: With respect to the daily sheets of the French Cafe, as it relates to additions and deductions.

Also of stipulation of fact C, relating to the personal living expenses of Mr. Rau for the years 1942 to 1947.

Mr. Gardner: I would like to say one word about the stipulation of fact C.

It is clearly understood, I believe, that this stipulation of fact C relating to the personal living expenses is in addition to the expenses shown in the original and the first stipulation that we have, showing income tax payments.

Is that correct, sir?

Mr. Simpson: That is correct, yes.

The Court: It will be received. [318]

(Testimony of Robert R. Webb.)

Mr. Simpson: If your Honor please, at this time I would like to move for leave to amend the Petitioner's Exhibit 12, which is a photostat of Mr. Webb's bank account, which is now in evidence, consists of 12 pages and covers the year 1947. I have 36 additional sheets covering the period from December 31, 1942, to December 7, 1945.

The Court: Suppose you offer that as a separate exhibit.

Mr. Simpson: As a separate one, that would have to be through Mr. Webb.

Mr. Gardner: I haven't seen it yet, your Honor. Might I ask if this is a complete record of all of the years previous, 1942 to November 17, 1945?

Mr. Simpson: Well, in reply to Mr. Gardner's question, I can say by examination of these sheets it does not purport to be a complete record up to 1947, which is beginning date for Exhibit 12, or for the purpose of demonstrating Mr. Webb's account beginning in 1943, up to the end of 1945, be attached to and made a part of Exhibit 12.

Mr. Gardner: I have no objection, your Honor.

The Court: I will admit the additional sheets, but since 12 is already in, the Clerk will assign another exhibit number for these additional sheets.

Mr. Simpson: All right. Thank you. [319]

The Clerk: Petitioner's Exhibit No. 25.

(The document above referred to was marked Petitioner's Exhibit 25 for identification.)

Mr. Simpson: I believe that Mr. Webb was on the stand when we finished last evening.

ROBERT R. WEBB

resumed the stand, having been previously duly sworn, was examined and testified further as follows:

Cross-Examination
(Continued)

Mr. Simpson: May we approach the bench, your Honor?

(Discussion off the record.)

By Mr. Simpson:

Q. Mr. Webb—— A. Yes, sir.

Q. I show you a group of checks, approximately 618 in number, on the French Cafe, in their account at the Bank of America for the year 1944, and ask you to thumb through the checks and tell me if your signature appears as drawer on the checks? A. One is Mr. Rau's.

The Court: Are most of them yours?

The Witness: Yes, sir.

Q. (By Mr. Simpson): Mr. Webb, so that we don't take up too much time, I now ask you to look at that group. I will withdraw the [320] one check of Mr. W. F. Rau, and ask you to take another look and state whether or not your signature appears on 617 checks?

A. Most of them are mine, but some are Mr. Rau's. There is Mr. Rau's.

Mr. Gardner: If the Court please, I think we could save time if this exhibit was going over, and the checks of—checks contained in that bunch of checks was removed by Counsel.

(Testimony of Robert R. Webb.)

Q. (By Mr. Simpson): Now, Mr. Webb, I will ask you to go back over that and look at those I have withdrawn.

A. You want me to pick out Mr. Rau's?

The Court: Just one at a time.

Mr. Simpson: There are approximately 600 checks there now, Mr. Webb.

The Court: Did you withdraw some of the checks from the pile, Mr. Simpson?

Mr. Simpson: Yes, approximately 17 checks.

The Court: How many?

Mr. Simpson: Approximately 17 checks. 16 I have counted. There are approximately 600 checks now remaining.

Q. (By Mr. Simpson): Mr. Webb, would you look through again?

The Court: Let the record show that Mr. Simpson is [321] withdrawing a few more checks as the witness is flipping through the pile.

The Witness: As far as I know, the rest of them are all of my signature.

Mr. Simpson: Five additional checks were withdrawn from the 16, making a total of 21 checks withdrawn from the packet of about 618 checks.

Q. (By Mr. Simpson): Now, the remaining checks there bear your signature on the French Cafe?

A. As far as I know. I can't see any others.

Q. That is for the year 1944, is it not, on the French Cafe?

A. There is one for Mr. Rau.

(Testimony of Robert R. Webb.)

The Court: Let the record show that an additional check has since been withdrawn.

Mr. Simpson: A total of 22 checks now withdrawn from 618.

The Court: Let the record also show that these checks have not been gone over one by one by the witness, but he has flipped through a rather large pile of checks, with sufficient care, however, to satisfy himself that most, if not all, of those remaining were signed by him.

The Witness: Yes, sir.

Q. (By Mr. Simpson): [322] Now, you drew the checks on the French Cafe for 1944 which you just examined? A. Yes, sir.

The Court: Are you going to ask him before you proceed to the other piles of checks what these checks were drawn for, Mr. Simpson?

Mr. Simpson: Well, yes, as soon as I establish that he has drawn these checks, then I will go back over very briefly the purposes.

The Court: Suppose we clear up the matter of this pile of checks, first.

Q. (By Mr. Simpson): Mr. Webb, in connection with the checks that you have just identified on the French Cafe for 1944, would you examine them in any way you would like, and state for the record the purpose for which the checks were drawn?

A. Well, a good many of them are payroll checks, or maybe supplies, payroll checks, supplies.

(Testimony of Robert R. Webb.)

Q. Can you look at a check and tell me whether or not it is for payroll?

A. This looks like a withholding tax. Somebody else wrote this and paid to the order—I don't know what this is. It was handed me to sign. It looks like a withholding tax.

Q. Now, let's get a check out of there that is for payroll. [323]

A. Payroll, okay. Here is a payroll check.

Q. Let the record show that the payroll check just referred to by the witness is made, check is made payable to Leon—do you know that name, last name? A. H-i-d-a-l-g-o.

Q. In the amount of \$29.60.

The Court: Mr. Webb, were you the one who drew checks on the account of the French Cafe in its day-to-day operations?

The Witness: Yes, your Honor.

The Court: For the payment of expenses and other charges that were incurred by the French Cafe? A. Yes, your Honor.

The Court: Was there anyone else that drew checks in a similar capacity on the account of the French Cafe?

The Witness: The only one, only other one would be Mr. Rau, the owner, himself.

The Court: Did you draw most of them?

The Witness: The majority of them; yes, sir.

Q. (By Mr. Simpson): They were drawn for all purposes, including payroll operating expenses?

A. Yes, sir.

(Testimony of Robert R. Webb.)

Q. Of all kind in connection with the French Cafe?
A. Yes, sir. [324]

Q. Now, that is something in addition to the merely taking of the cash receipts from the French Cafe now?
A. Yes, sir.

Q. I believe your testimony is that you had nothing to do with the French Cafe, except taking the receipts. Now, your testimony is that you paid, drew checks for various sources for that operation?

A. I am sorry. I forgot about the checks.

Q. Going through the same thing again, I will show you another group of checks on the French Cafe for 1945, they have not been counted, but they appear to be 200 or 300 checks, a rough estimate.

The Court: These are for other years?

Mr. Simpson: This for '45.

The Court: Mr. Simpson—

Mr. Simpson: 1945.

The Witness: Yes, sir.

Q. (By Mr. Simpson): Have you looked at those?
A. I did.

Q. Have you satisfied yourself that this group is for the same purpose that the group shown to you for 1944, represent in the way of payments of operating expenses of the French Cafe?

A. Some of these checks are by Mr. Bender, who was [325] a partner of Mr. Rau in 1946, but the rest of them look like all mine.

Q. With the exception of those few?

A. Yes, sir.

Mr. Gardner: Did I understand Counsel to be

(Testimony of Robert R. Webb.)

referring to checks for the year 1945 in his question to Mr. Webb?

Mr. Simpson: Yes, I did refer to 1945, and let the record show that there is included in there, inadvertently, some checks that have to do with 1946.

If your Honor please, these checks had been separated by dates previously, and I can now see that they have, for some reason or other, included with other dates. I am not going to spend any more time on it.

I think we have established that you did draw the checks for these various purposes for the French Cafe for 1945, 1944, 1945 and 1946?

The Witness: Yes, sir.

Q. (By Mr. Simpson): You agree to that?

A. Yes, sir.

Mr. Gardner: Might I ask also in this question Counsel has just put to the witness, referring to the year 1946, are you including the French Cafe at the time it became a partnership on May 6, 1946?

Mr. Simpson: Yes, I am. [326]

The Witness: Yes, sir.

Q. (By Mr. Simpson): And you drew checks on that partnership of Rau and Bender in 1946, did you not, Mr. Webb?

A. I believe I drew checks when Mr. Bender was a partner. I couldn't be positive.

Q. Did you also draw checks on the partnership in which you were a partner in 1947 with Mr. Rau and Mr. Bender?

A. I believe I had the authority to draw them. I

(Testimony of Robert R. Webb.)

think Mr. Bender drew most of them or Mr. Reed was the——

Q. I asked you, Mr. Webb, if you drew the checks.

Mr. Gardner: If the Court please, I would like to have Counsel instructed to let the witness answer.

Mr. Simpson: I want a responsive answer, Mr. Gardner. I asked him if he drew the checks.

The Witness: I am not sure.

Q. (By Mr. Simpson): Thank you. Mr. Webb, I am going to show you a group of checks on the French Cafe in the Anglo, California National Bank, bearing various dates in 1946, and ask you if that is your signature as drawer of those checks?

A. That is.

Q. Just thumb through those.

A. Those are my checks, my signature [327]

Q. Would you state for the record whether or not you see any checks dated subsequent to May 29 of 1946, the date on which the partnership between Mr. Bender and Mr. Rau was formed?

A. October, 1936—1946. October 31, 1946, a payroll check, October 31, 1946.

The Court: What do these dates mean?

Mr. Simpson: Subsequent to the formation of the partnership between Mr. Rau and Mr. Bender.

The Court: I understand that, but is the witness reciting those dates to indicate that there were checks made out by him on those dates?

Mr. Simpson: Yes.

The Court: Proceed.

(Testimony of Robert R. Webb.)

Q. (By Mr. Simpson): Mr. Webb, did you draw checks subsequent to the time that Mr. Rau and Mr. Bender formed a partnership with the French Cafe?

A. Yes, sir.

Q. Now, I show you a group of checks bearing various dates in 1947, and ask if your signature appears on those checks?

A. Those are Mr. Bender's on some of them; most of them are my signature.

Q. And they are on the French Cafe for the year 1946? [328] A. '47.

Q. '47, I am sorry. And you were a partner in that partnership, as well, in 1947?

A. I was not in the partnership at the time these checks were written on the French Cafe.

Q. Now, that is not going to be clear for the record. Would you identify the check and give the date this check was drawn, check number?

A. Check No. 1290, drawn 6/19/47, paid to the order of Al Neal, N-e-a-d or "1," I don't know, for \$59.10, signed by me.

Q. Now, your explanation as to that check, please, again.

A. I imagine that is a payroll check.

Q. And you did not draw that check at the time that there was a partnership in which you were a partner on the French Cafe with Mr. Rau and Mr. Bender?

A. The partnership of the French Cafe with Mr. Bender and Mr. Rau was sometime in the summer of 1947. The restaurant was opened for about, op-

(Testimony of Robert R. Webb.)

erated for about, maybe, two weeks or a month, and then it was closed down for remodeling.

Q. Were you a partner at that time, Mr. Webb?

A. I was a partner when we were at 1800 Chester Avenue. [329]

Q. Were you a partner with Mr. Rau and Mr. Bender on June 19, 1948, the date on which you drew this check?

A. Let's see, June 19. Yes, sir.

Q. Mr. Webb, you have testified previously that the deposits which you made in your bank account at the Bank of America in Bakersfield in 1947 came from savings, or from sale of war bonds. I ask you now, is that the only bank account that you have?

A. No. I have, we had a bank account in Beverly, I think the Beverly branch of Wilshire Boulevard. My wife had it in her name.

Q. Did you have any other bank account, yourself?

A. No, sir.

Q. In your name? A. No, sir.

Q. You had no savings account in your name?

A. Not at that time, no, sir.

Q. At what time did you have your savings account?

A. All through my life I have had a small savings account. I don't recall, never amounted to very much.

Q. Did you have a savings account in 1942?

A. I don't recall.

Q. Do you recall whether or not you had such an account in 1943?

(Testimony of Robert R. Webb.)

A. I don't recall whether I had. [330]

Q. 1944? A. No, sir.

Q. Or 1945? A. No, sir.

Q. You do not recall?

A. No. I am sure I didn't have one in 1945 or 1944.

Q. You are sure you did not have one?

Mr. Webb, did you keep payroll books as manager?

A. I signed the payrolls. I didn't make out the checks, very few. I may have made out them occasionally. They are all usually made out by the book-keeper and they were brought to me at the desk and I would sign them.

Q. You would sign the check for the payroll?

A. Yes, sir.

Q. But you never made any entries in the books as to what an employee was to receive as wages?

A. No, sir.

Q. Did not. You only made out the checks after someone gave you the information?

A. Yes, sir.

Q. Do you know Phil Bender? A. Yes, sir.

Q. What was Mr. Bender's duties; was he an employee of Mr. Rau's [331]

A. He had been an employee; yes, sir.

Q. What were his duties?

A. Well, he was a chef and steward.

Q. In what business?

A. In the French Cafe.

Q. In the French Cafe? A. And——

(Testimony of Robert R. Webb.)

Q. And was he the steward or chef for 1942 through 1947?

A. During those years he had worked there. He probably worked there couple of times, but I don't remember the years through '47 he was.

Q. Can you recall the amount of his salary in any particular year from 1942 to 1946, when he became a partner with Mr. Rau?

A. Well, I would be just guessing. I think about \$400 a month.

Q. \$400 a month?

A. That is just a guess now.

Q. Now, Mr. Webb, do you recall that an examination had been made of Mr. Rau's income tax returns by revenue agent Mr. Walter Slatter; do you recall such an examination? A. No.

Q. You do not. Did Mr. Slatter ever consult with you?

A. Not that I recall, no, sir. [332]

Q. Do you know whether or not Mr. Rau paid any additional income taxes as a result of an examination sometime in 1947? A. I do not, no.

Q. Just a moment, your Honor.

Well then, it is your testimony that you never saw Mr. Slatter? A. I don't remember.

Q. You do not remember. You do not recall an examination of Mr. Rau's income tax returns for 1942, 1943 and 1944?

A. I don't recall; no, sir.

Q. Coming back to the placing of the money in

(Testimony of Robert R. Webb.)

envelopes in the safe, did you see Mr. Rau open the safe and take the envelopes out of the safe?

A. Usually Mr. Rau would ask me to get the envelopes out for him. He will say, well, how much money do we have, let's get this money out and get it in the bank, or for some other purpose, but he may have gotten it out himself. He could have any time, because the bank is right there, the safe is right there; either he or I.

Q. But you did not see him take the money out of the envelopes?

A. I don't recall him taking it out; no, sir.

Q. Never saw that? [333]

A. Yes, I took it out.

Q. You took the money out of the envelopes?

A. Yes, sir.

Q. Then you handed the money to Mr. Rau?

A. I don't know whether I handed it to him or not. He was right there at the desk when the money would be there. I would make the deposit or cash it.

Q. You took the envelopes out of the safe; did you open the envelopes and take the money out and give it to Mr. Rau?

A. I don't remember handing it to him; no, sir.

The Court: Well then, in what fashion did you make it available to him?

The Witness: I would take the money out of the safe and put the money——

The Court: In his presence?

The Witness: Yes, sir.

(Testimony of Robert R. Webb.)

The Court: And put it right where, on the desk somewhere?

The Witness: On the desk.

The Court: He was there?

The Witness: Yes, sir.

The Court: Would he take it from the desk?

The Witness: He would have me put it in the bank, or take the cash, himself. [334]

The Court: Well, were there occasions when he took the money in your presence?

The Witness: Yes, sir, your Honor.

The Court: Did that happen often?

The Witness: About once a month.

Q. (By Mr. Simpson): Now, when he took the money in your presence, did he put it in his pocket?

A. Sometimes he would put it in his pocket; yes, sir.

Q. And other times, what did he do with it?

A. He would have me put it in the bank, put it in his personal account.

Q. Now, when he took the money in your presence, put it down on a table, or desk, he picked the money up and handed it back to you on those occasions when you deposited it in his personal account; is that it? A. Yes, sir.

Q. On those occasions, when he did not hand the cash or money back to you, he then put the money in his pocket; is that correct, sir? A. Yes, sir.

Q. Did you know how much money was in the envelope at the time you took it out of the safe?

A. Yes, sir.

(Testimony of Robert R. Webb.)

Q. Now, state, if you will, on those occasions when [335] the money was not given back to you for purposes of depositing in his personal account, how much did Mr. Rau put in his pocket in cash?

A. I don't remember.

Q. Would it be as much as a thousand dollars?

A. It could be; yes, sir.

Q. Well, would it be \$2,000?

A. It could be \$2,000.

Q. I don't want to carry on this ad infinitum, could it be \$4,000? A. I don't remember that.

Q. Don't remember that? A. No, sir.

Q. But you—it could be \$2,000 at the end of a month. Mr. Rau did not give you the money for the purpose of depositing in his personal bank account, he then had the money on his person; is that correct?

A. He might put the money in another envelope, put it in the safe.

Q. He put the money back in the safe, after you took it, the envelope out?

A. He could have, but I don't recall just what, exactly what happened in every occasion. All I know is that he got the money or the bank, it was sent to the bank.

The Court: When you say he could have, you mean that [336] that happened once in a while or that it happened sometimes?

A. It happened practically every month, sir. It could have happened in the middle of the month; he could have come out and taken some money.

Q. (By Mr. Simpson): Mr. Webb, what I am

(Testimony of Robert R. Webb.)

trying to get from you is some testimony as to what happened to the cash that was taken out of the envelopes in your presence by Mr. Rau, keeping in mind specifically the occasions when he didn't give the money back to you for the purpose of putting it in his personal bank account.

I want you to tell me whether or not he put the cash in his pocket and then left the desk. Now did he do that? A. He could have.

The Court: Did he?

The Witness: Well, yes, sir.

Q. (By Mr. Simpson): That would happen more often than giving the money back to you for the purpose of depositing in his bank or can you state?

A. I couldn't state that, sir. I don't know.

Q. Would it be 50-50?

A. I couldn't state that.

Q. Well, can you give a guess as to how often you [337] saw Mr. Rau put the cash in his pocket when he didn't give it to you to put in his personal bank account?

Mr. Gardner: If the Court please, I object to the question, calling for a guess on the part of the witness.

The Court: Sustained.

Q. (By Mr. Simpson): Mr. Webb, give the approximate number of times that you saw Mr. Rau put the cash in his pocket.

A. I couldn't give you approximate number of times. I don't remember.

(Testimony of Robert R. Webb.)

Q. Then tell me, the approximate number of times that he gave you the cash to put in his personal account, now keeping in mind for the purpose of that question, Mr. Rau, that there are 12 months in a year, and 30 days, every 30 days he came down to the safe in your presence, took money out of an envelope which you had previously put in there for him and keep in mind for purposes of that question, if you will, the number of times that he gave you the cash to deposit in his bank account.

Mr. Gardner: If the Court please, I think the question is rather vague. Does he relate to one year, or does it relate to the entire period of time up to August 7, 1947? I don't know from the question.

I think that Counsel should be instructed to make the question more specific. [338]

Q. (By Mr. Simpson): In 1942, would you please state the number of times that Mr. Rau gave you the cash to go down to the bank and deposit in his personal bank account?

A. It would be at least once a month, maybe more, but I couldn't recall.

Q. That would mean then that he had no cash to put in his pocket, if it was once a month he gave you the money to put in the personal bank account?

A. He wouldn't have it all in the personal account. He might take out, in the middle of the month, for that matter, I don't know just when, but he might come out and take out \$500, put it in his pocket, or put in the bank, or he could have put it in the—take it to the safety deposit box.

(Testimony of Robert R. Webb.)

Q. Well didn't you go with him to the safety deposit box?

A. I made several trips with him to the safety deposit box; yes, sir.

Q. Didn't you go with him on every occasion that he went to the safety deposit box?

A. I couldn't swear that I went on every occasion.

The Court: Did you go on most occasions?

The Witness: Yes, sir, your Honor. [339]

Q. (By Mr. Simpson): In 1943, please state the number of times in a year that Mr. Rau gave you cash for the purpose of depositing in his personal bank account?

A. I don't know; I don't remember.

Q. In 1943, please state the number of occasions that Mr. Rau gave you cash for the purpose of putting it in his personal bank account?

A. I don't remember.

Q. In 1945, please state the number of occasions that Mr. Rau gave you cash for the purpose of depositing it in his personal bank account?

A. I don't remember.

Q. In 1946, please state the number of occasions that Mr. Rau gave you the cash for the purpose of depositing in his personal bank account?

A. I don't remember.

Q. In 1947, please state the number of occasions that Mr. Rau gave you cash for the purpose of depositing in his personal bank account?

A. I don't remember.

The Court: But do you remember that you did

(Testimony of Robert R. Webb.)

deposit amounts that he gave you in each of those years?

The Witness: Yes, your Honor.

The Court: And what is it that you don't remember, the number of occasions? [340]

The Witness: Yes, sir.

Q. (By Mr. Simpson): Now, do you remember the amount of cash that he gave you to put in the personal bank account on these occasions?

A. I do not remember the amounts, no, sir.

Q. Can you approximate the amount of cash that he gave you to deposit in his personal bank account?

A. I might—he might give me a thousand dollars, or he might give me \$300, if it is 30 days; \$750 if it was 60 days, and put that all in his account. I don't remember exactly. He may have had more than that.

Q. Mr. Webb, I show you Petitioner's Exhibit 11, being the personal bank book of Mr. Rau, in the Bank of America; I believe you previously testified that you made or took the cash on most of these occasions for the purpose of depositing in that account as reflected in that book; isn't that true?

A. Yes, sir.

Q. Directing your attention to the date of December 25, 1942, deposit of \$2,450, and ask if you can recall that occasion on which you made that deposit?

A. No, I can't recall it.

Q. Looking down further in the book, January 7, 1943, there is a deposit of \$2,000 in the personal bank [341] account of Mr. Rau, do you recall the occasion when that deposit was made?

(Testimony of Robert R. Webb.)

A. No, sir, I don't recall any of the occasions.

Q. Can you look in this book and tell the Court when you, if you made any of the deposits that you see reflected in that account?

A. I made quite a few deposits, but I don't recall any specific one. I know I deposited most of his money for him.

Q. If there was a large amount of cash in your pocket at the time you went to the bank, would not that be something that you remember?

A. Not particularly, no, because I was, I handled quite a lot of cash for Mr. Rau.

Q. In other words, you had in your possession a large amount of cash at all times?

A. Not at all times, but several times I had large amounts of cash that I would go up to the bank and either bring back or take to the bank, large amounts of cash; yes, sir.

Q. Now, Mr. Webb, did anyone see you put the cash in the envelopes when you put the envelopes in the safe?

A. They may have, but there wasn't any, I didn't ask anybody to watch me put it in or anything like that.

Q. Who else was there that could have observed your [342] putting the cash in the envelopes?

A. Well, Mr. Rau could observe me, or Miss Goldstein could, or bellboy could, or the other clerk could. He is right there in the office, the safe.

Q. Would they know how much cash you put in the envelope?

(Testimony of Robert R. Webb.)

A. No. There is no reason why they should know ; no, sir.

Q. Would they also see Mr. Rau take the money out of the envelope, right there in the office, with all these employees ?

A. They could have ; yes, sir.

Q. Well, were they there at the time Mr. Rau took the money out of the envelope ?

A. I don't remember, maybe sometimes they might have been, maybe not. I don't remember.

Q. Can you state whether or not they were there when you put the cash in the envelope ?

A. I don't remember.

Q. If Mr. Rau did not give you the cash for the purpose of depositing in his personal bank account, and took the money out of the envelope in your presence, as you have stated, he then had the money on his person when you last saw him and the cash ?

A. He might have had it on his person, or he might [343] have put it in his own, in his safe for himself.

Q. In what safe, Mr. Webb ?

A. In the office.

Q. He would put it back in the safe, do you mean ?

A. He could have ; yes, sir.

Q. Well, you were right there, did you see him put it back in the safe ?

A. Yes. Occasions I have seen him put the money in the safe.

Q. And how often would that be ; would that be a

(Testimony of Robert R. Webb.)

general practice, let me ask you the question that way? A. Yes, sir.

Q. That would be the general practice, that is, that money would go back into the safe, except on those occasions when he gave you the cash to put in his bank account?

A. He might have put it in his pocket. He might have sent me to the bank with it, or he might have put it in the safe.

Q. Of course, there are many, many possibilities, and I am trying to rule out certain possibilities, Mr. Webb, so that we can identify or establish rather, exactly what happened to that cash in your presence that you have been testifying here for three days, that you took that cash out so much money a day, there was no question or hesitance about your testimony in that regard. [344] A. Yes, sir.

Q. Now, I am going to try and find out from you where it finally ended up, where it went, and you are the man that can do it.

You gave him that cash or made it available to him by putting it on a desk? A. Yes, sir.

Q. On some occasions he gave you that cash, you knew how much was in the envelope, you have already stated that. A. Yes, sir.

Q. And you took it down and put it in his bank account, personal account; is that correct, so far?

A. At times, not every month it wouldn't happen.

Q. Well now, when it didn't happen——

A. He may have put——

(Testimony of Robert R. Webb.)

Q. —the cash was there, Mr. Webb, on the table, what did Mr. Rau do with it then?

A. He might have put it in his pocket.

Q. Well, did he put it in his pocket?

A. Sometimes.

Q. And on other times, what did he do with it?

A. He might have put it in the safe.

Q. Did he, did you see him put it back in the safe?

A. I have seen him put it back in the safe; yes, sir. [345]

Q. Right back again?

A. Maybe that, not that amount, some in his pocket. I don't recall just exactly how it happened. Maybe all of it.

Q. When he left you on occasions, when he didn't put it back in, then is it safe to assume so far as you are concerned, that it was on his person when you last saw the cash, or knew of its disposition?

A. I really didn't pay much attention what he did with the money after I gave it to him.

Q. Well, please state how much attention you paid to the cash when it came out of the safe; did you count it? A. It was counted; yes, sir.

Q. Now, it was counted 12 times a year, every month? A. Yes, sir.

Q. Was it counted every day?

A. Not every day. It wouldn't be necessary to count every day.

Q. Well, when you took \$10 off——

A. I would put it in an envelope.

(Testimony of Robert R. Webb.)

Q. Put it in the safe; did you know how much was in that envelope at that time? A. Yes, sir.

Q. Could you look at that envelope on any [346] given day during that month and tell how much cash was in that envelope? A. Yes, sir.

Q. You could?

A. Just by the number of days.

Q. You counted every day then, did you not?

A. I don't know whether I counted every day. I put it in the envelope every day. I knew how much it was in there, because if it was the 10th of the month, I knew there would be \$100.

Q. There was some money left over in that envelope? A. There would be another envelope.

Q. Another envelope?

A. I had two envelopes with \$10 a day in one envelope, \$25 a day in the other envelope. Anything else that was taken out would be put in another envelope, and marked on the envelope how much was taken out, the amount, and the date. That would be turned in to Mr. Rau. He might come up two days later and take it all away, take it out; then we start another envelope.

Q. If he took all that cash out, he did it when you weren't there then?

A. He could have; yes, sir.

Q. Well, did he?

A. I don't recall that; I don't know. [347]

Q. Do you ever recall an occasion when you went in in the end of the month, opened an envelope and saw no money in it at all? A. No, I don't.

(Testimony of Robert R. Webb.)

Q. Well then, you had to count the money every day then to be able to tell on any given day how much money was in the envelope; didn't you?

A. No, I didn't have to count it every day.

Q. Then how did you know how much was in there on any given day then?

A. Well, the envelope I put \$10 a day in, it was the 10th of the month, I know there would be \$100. I might count it; there would be no necessity for counting it, because he never touched those envelopes.

Q. Which ones did he not touch now?

A. He would never touch the one with the \$10 a day or \$25 a day, that I recall.

Q. Which ones did he touch?

A. He would touch, he might take the money out of an envelope that was the \$100, or might take \$100 out on a Saturday. He might take that.

Q. Now, we have three different envelopes now?

A. At least three; yes, sir.

Q. You had at least three, you had one that had \$10 a day in it, one that had \$25 a day in it, and a third [348] envelope now that had \$100 on Saturdays and Sundays?

A. Yes, sir.

Q. Is that it? A. Yes.

Q. Now——

The Court: I thought you had testified as to four envelopes; one on the \$10 a day, one in which you deposited the \$10 a day from the French Cafe, and a second one which you put \$25 a day from the bar, a third one in which you put the unusual amounts

(Testimony of Robert R. Webb.)

from the French Cafe—that is the amounts that were taken on week ends, or on days when it was busy, and a fourth one in which you put the unusual amounts that you took off from the bar.

Now, if I have misunderstood about you, about these four envelopes, will you please make it straight now.

The Witness: There is one envelope for the coffee shop, French Cafe, \$10 a day; one for the bar, \$25 a day; another envelope, if I took out \$100 on the week ends.

The Court: From what?

The Witness: From the restaurant or the French Cafe.

The Court: Then the third envelope was for unusual amounts that came from either the French Cafe or the bar?

The Witness: Yes, your Honor.

Q. (By Mr. Simpson): Well now, did you know how much was in the third [349] envelope containing the so-called unusual amounts taken off?

A. Yes, sir.

Q. And how often did you count the money that was in that envelope?

A. If I put any money in that envelope, I would put the date and the amount on the envelope.

Q. So then, you knew each day how much was in the envelope? A. Yes, sir.

Q. Now, if I understand you correctly, Mr. Rau did not touch the envelope that had the \$10 a day in it?

(Testimony of Robert R. Webb.)

A. As I recall, he never touched that envelope, or the one with the \$25 a day. He might have taken out of the other envelope.

The Court: That is the third one?

The Witness: Yes, your Honor.

Q. (By Mr. Simpson): The third envelope?

A. Yes, sir.

The Court: Did you ever take moneys out of the first two, that is the \$10 a day envelope, or the \$25 a day envelope at the end of the month and transfer those aggregate amounts into the third envelope?

The Witness: That could have happened. I don't recall [350] just how, or the occasions.

Q. (By Mr. Simpson): If it did happen, Mr. Webb, you would have to know it, though, wouldn't you? A. He might take the three envelopes.

Q. I want you to answer the question: if it did happen, where he took the money out of the first two envelopes, containing the \$10 a day and \$25 a day, and transferred that money into the third envelope, you would know that, wouldn't you, Mr. Webb?

A. Yes, sir.

Q. Now, if he did that, then you would of course know it. Now, since you knew it at the end of the month, was there an occasion when there was no cash in the \$10 envelope and no cash in the \$25 envelope?

A. At the end of the month; yes, sir.

Q. There would be no cash in it?

A. That is right.

Q. You recall that?

(Testimony of Robert R. Webb.)

A. I recall it, that would be all taken out. We would start new envelopes on the first of the month.

Q. Two new envelopes, though?

A. Two new envelopes, yes.

Q. Now, all the money was in one envelope, the third envelope? [351]

A. The third envelope we would take it all out. He might have me take the whole amount of the three envelopes and deposit them, or do most anything else with them. I don't recall.

Q. Well now, on that third envelope, could you look at it and tell how much money was in there on any given day?

A. Oh, yes, sir.

Q. You could?

A. Yes, sir.

Q. Now, you tell the court exactly how you could tell on any given day the amount of cash that was in that third envelope?

A. Because I would mark on the envelope the amount and the date, and if Mr. Rau took any out, he would cross it off, or tell me. Then I would count it.

Q. Please state how you knew that he took any money of the \$10 envelope and out of the \$25 envelope, and transferred the contents of those two into the third?

A. I didn't say that he took it out of the \$10 envelope or \$25 envelope, the third envelope. He might come down in the middle of the month and say put this money in the bank, or put it in some other private use; wouldn't necessarily have to be the last of the month on the third envelope. [352]

Q. Didn't you just get through testifying that

(Testimony of Robert R. Webb.)

he took money out of the \$10 envelope and \$25 envelope and transferred it to the third?

A. At the end of the month he might put it altogether, the three envelopes, and deposit it all in the bank, or for some other purpose, which I wouldn't know.

Q. Did that third envelope have a notation in your handwriting as to the amount of money that was in that third envelope? A. Yes, sir.

Q. Then was it not necessary for you to look in the first and second envelopes to determine that there was no cash in them that had been transferred to the third envelope so that you could have an accurate count of the money in the third envelope?

A. Well, as far as I know, there was never anything taken out of the two envelopes during the month.

Q. Never anything taken out of the first and second envelopes? A. That is right.

Q. During the month? A. Yes, sir.

Q. Now, when the contents of the first and second envelopes were transferred to the third envelope, the contents of the first and second envelopes transferred to [353] the third that is, did you count the money at that time when it was transferred?

A. At the end of the month, if there was any money in the other envelope, the third envelope, it would probably be put together, either deposited in the bank, or Mr. Rau might take it for some other use, put it in his own personal account, or for most anything. I don't know.

(Testimony of Robert R. Webb.)

Q. When you took the envelopes out to make the cash available to him, then you took it out of the third envelope?

A. If there was any money in the third envelope, it was all taken out; yes, sir.

Q. And you put it on a table, the cash, and Mr. Rau took part of it?

A. He might take part of it; he might not.

The Court: What table was this, and where was the table?

The Witness: The front desk, your Honor.

Mr. Simpson: At the front desk.

The Court: Is this a table behind the desk, or was this the desk, itself, that you are referring to as the table?

The Witness: Yes. We had a desk in the little, desk in the back office, and usually he would, we would count it back there, or if he had any deposits, he had the amount [354] right on the deposit book, which we knew that it was okay.

Q. (By Mr. Simpson): What was the cash doing out on the front desk then?

A. It could have happened in the front desk. We had a desk to register on. Over here we had a little desk for our room rack, which is enclosed. Could have been counted there, could have been counted in the back office on the desk.

Q. Well, I think you testified, Mr. Webb, that the cash was out in the front, on the front desk?

A. Could have been the front desk, or the back desk; I don't remember.

(Testimony of Robert R. Webb.)

Q. Well, this happened at least 72 times, can't you remember where it happened most of the time?

A. Usually in the front.

Q. Usually right out there in the front?

A. In back of the room clerks, in back of the room rack; yes, sir.

Q. It didn't happen——

The Court: Would this be visible to anybody in the lobby, to any strangers passing through the lobby?

The Witness: Yes. The whole office was visible for anybody in the lobby. [355]

Q. (By Mr. Simpson): Then there was an office in addition to the front desk where the cash was placed when it was made available to Mr. Rau?

A. I don't quite get you, sir.

Q. In addition to the front desk, there was also an office?

A. It was just one office, but it was a little in the rear of the office. We had the safe and another desk and a couple of chairs, and a desk, and also some files for records.

Q. Now, when Mr. Rau took part of the cash and left, the last you knew of it then it was on his person?

A. He may have put it, been on his person, or he may have put it in the safe in his own envelope. His own, he had a little box.

Q. There was another envelope?

A. In this big safe, there was one box that he could lock with a little separate compartment.

(Testimony of Robert R. Webb.)

Q. Little drawer, did it have a key?

A. He had a key; yes, sir.

Q. Did you have the key?

A. Not to that; no, sir.

Q. Then at no time did you ever know how much cash was in that little box?

A. No, I didn't. [356]

Q. And that safe was kept in the front part of the hotel at the front desk?

A. It was in the lobby of the hotel.

Q. The lobby?

A. It was in the back of the room clerk's office.

Q. So at no time then did you know how much cash was in that drawer?

A. I don't remember any time, no. I may have, but I don't recall it.

Q. Did you see Mr. Rau put it in there, cash?

A. Oh, yes. He kept money in there; yes, sir.

Q. You saw him put it in?

A. Probably did. I was around there all the time.

Q. If he put it in there, did you ever see him take it out?

A. He had some money in there several times. I don't know how many times, but he would take thousand dollar bills, we would go down to the Anglo Bank and he would put it in the safety deposit box.

Q. Where did he have the thousand dollar bills?

A. They would be in the safe.

Q. Do you know how they got in the safe?

(Testimony of Robert R. Webb.)

A. He would put it out in the safe. If I went to the bank and got two thousand dollar bills or four one thousand dollar bills, I would bring it back to him, and [357] he would take the money and put it in the safe.

Q. When you got the one thousand dollar bills from the bank, did they make a record of it?

A. Did the bank make a record?

Q. Yes. A. I wouldn't know.

Q. Did this occur in 1942, the getting of these thousand dollar bills?

A. I don't believe so. It seemed to me it was later on, but it could have been.

Q. How much later, now, Mr. Webb?

A. I don't know. It was during the war years, all I can recall, or after the war.

Q. During the war years? A. Yes.

Q. Now, when you went down to the bank to get a thousand dollar bill, or four one thousand dollar bills, did you just put four thousand in cash in the, to the teller, hand you four one thousand dollar bills right at that moment, sir?

A. If it was four thousand, he would hand it to me; yes, sir.

Q. He did. Did he make any record of the serial numbers on the thousand dollar bills on those occasions?

A. The bank may have. I never made any record, no. [358]

Q. Did you see the teller make a record?

(Testimony of Robert R. Webb.)

A. I don't recall. I didn't pay any attention to what the teller was doing.

Q. Did he ask you your name when you got the thousand dollar bills?

A. No. Most of the tellers knew who I was. I worked for Mr. Rau.

Q. So, for their records of getting a thousand dollar bill, they didn't make any notation as to—

A. They may have, but I wouldn't know.

Q. You don't know that?

A. No. I don't pay any attention to that.

Q. Mr. Webb, do you know Jack Longway?

A. Yes, sir.

Q. Have you ever been in business with him?

A. No, sir.

Q. Never been in business with him?

A. No, sir.

Q. Have you ever been in a mine deal of any kind, mining deal, mining operation?

A. Not that I recall, no.

Q. Do you have any present business connections with Mr. Longway? A. No, sir.

Q. How well do you know Mr. Longway? [359]

A. Well, I used to know him quite well. He was in the service, when he came out I haven't seen Mr. Longway, probably in, maybe five years. I don't—maybe longer than that.

Q. He was in the service until when?

A. I believe he was in the Navy during the war, part of the war, anyway.

Q. What was his rank in the Navy?

(Testimony of Robert R. Webb.)

A. I think when he came out he was—I don't know whether he was Chief Petty Officer. I knew he was Petty Officer.

Q. He was a Petty Officer?

A. He may have been a Chief Petty Officer. I don't recall.

Q. Do you recall the year that he left the Navy?

A. No, sir.

Q. Do you have any present business associations with Miss Rose Goldstein?

A. No, sir.

Q. Have you ever had?

A. No, sir.

Q. Did you ever work with Miss Rose Goldstein?

A. Yes, sir.

Q. For—Mr. Webb, I mean for Mr. Rau, I am sorry.

A. Yes, sir. [360]

Q. She was an employee of Mr. Rau?

A. She was employed, I think, part-time by Mr. Rau.

Q. Part-time. Was Miss Goldstein married at that time?

A. I don't—Miss Goldstein was married to Mr. Longway, but I don't recall the year or the date, or what just exactly what it was. I think it was after the war.

Q. You don't recall the year?

A. No.

Q. In which Miss Goldstein married Mr. Longway?

A. We always called her Miss Goldstein or Rose.

Q. Do you know whether she goes under both names, that is Miss Rose Goldstein, and also Mrs. Jack Longway?

(Testimony of Robert R. Webb.)

A. I believe she may have her business name as Miss Goldstein, but I haven't seen Miss Goldstein until I saw her down here, within I guess a couple of years, and that was at least two years.

Q. Been at least two years since you have seen her?

A. Until I saw Miss Goldstein at the courtroom here.

Q. At the time you made the entries on the daily sheets of the French Cafe, you knew, did you not, at the time you made them, that they were false?

A. Yes, sir. [361]

Q. And you made them every day for 365 days a year, except on those occasions that you were not there?

A. Yes, sir.

Q. And on those occasions, the entries, if any, were made by whom?

A. Well, they probably were made by Miss Goldstein.

Q. By Miss Goldstein. Would you please explain, if you will, please, your account of making a record of these false entries for each of the years 1942 through 1947, to 1947, inclusive?

A. I don't quite understand.

Q. What was your reason in making these records as you have testified to, in connection with the daily sheets of the French Cafe?

A. I was instructed by Mr. Rau.

Q. Now, since you were instructed by Mr. Rau, you felt that there was no alternative open to you but to falsify the records?

(Testimony of Robert R. Webb.)

A. No, I could have quit.

Q. You could have quit?

A. Or I could have gone and informed on him, I suppose.

Q. Have you informed on him?

A. No, sir. I never did inform on him; no, sir.

Q. Well, don't you think you should have? [362]

A. Probably should, yes. But I just didn't, did not inform on him.

Q. You are quite certain of that?

A. I am positive of it.

Q. Positive of that? A. Yes, sir.

Q. Now, every day that you wrote down that false entry, you knew that it was false. Please explain how you were able to consent to that false act of cheating your Government knowingly.

A. Well, I didn't realize I was cheating the Government, myself. I thought that was up to Mr. Rau. I was just following his instructions. I knew it was wrong, but at the time I didn't realize that I had anything to do with how he made out his income tax, or just what he did.

Q. So now your explanation is, if I understand you correctly, if I am wrong—

A. My explanation is that I did not inform, or I did not have anything to do with it.

Q. I want to come back to these entries that you made every day, these records. Did Mr. Rau instruct you to make the records that we have here in evidence?

(Testimony of Robert R. Webb.)

A. He instructed me about the \$10 a day, and the \$25 a day; yes, sir. And—— [363]

Q. Did he instruct you to make a record of that, as we have seen here in evidence on the daily sheets of the French Cafe? As a matter of fact, you have a photostat Respondent's Exhibit M, right before you of those daily sheets showing the amounts taken off each day.

Did he instruct you to make that entry showing \$10 taken off that day? A. Yes, sir.

Q. He told you to keep a record of his cheating?

A. No, he didn't tell me to keep a record of it; no, sir. I never knew these were in existence. As far as my part of it, I just turned these over to the bookkeeper.

Q. You did not know that the——

A. I wasn't even interested whether they were, or anything about it. I just turned them over, after he got through with it, he would consult with Miss Goldstein, practically every day.

Q. You didn't know anything about the daily sheets of the French Cafe reflecting the \$10?

A. Yes, sir.

Q. Then I ask you again, did Mr. Rau tell you to make the entry on the daily sheets showing that the \$10 was taken off that day?

A. No. I don't recall him telling me how to do it.

Q. Well then, it was your voluntary act of recording [364] it all on your own to demonstrate the fraud against your Government, without any in-

(Testimony of Robert R. Webb.)

structions from Mr. Rau to make the entry of his cheating?

A. The reason I made the entry, so Mr. Rau could see exactly what it was.

Q. Well, he knew, didn't he?

A. He could tear it up after I got through with it. I don't care.

Q. Well, he told you, Mr. Webb, to take it off according to your testimony, he already knew. Now, tell me why you kept the record voluntarily on a daily basis, showing the amount taken off on the French Cafe?

A. The minute I was——

Mr. Gardner: If the Court please, the witness has answered that question twice before, and I think it is now becoming just an argument between Counsel and the witness. I object to the question.

The Court: Were these sheets turned over to him every day; did he see them?

The Witness: I imagine he saw them every day, sir, every day he was downstairs, or if he was in his room, they would be taken up to his room and Miss Goldstein, the bookkeeper, would get it after we got through with it.

The Court: Well, these sheets were taken up to his room on occasion? [365]

The Witness: On occasion, yes, sir.

The Court: And on occasions, were given to him in some other fashion?

The Witness: Just the way it is here.

The Court: With your handwriting at the bottom showing the amount taken off?

(Testimony of Robert R. Webb.)

The Witness: Yes, sir.

The Court: So, this was a practice you were engaged in with his knowledge and consent?

The Witness: Yes, sir, your Honor.

Q. (By Mr. Simpson): So then in effect Mr. Rau told you to continue the practice of demonstrating and establishing his cheating, he liked it?

A. Evidently.

Q. Is that it, he definitely wanted you to keep that record after he saw it, he said "This is fine, keep it day after day"?

A. He didn't tell me to keep any records. I didn't keep any records.

Q. You didn't keep any records?

A. I didn't know what happened to this after I got through with it. First time I have seen these sheets since I worked for him.

Q. But you put the figures down on there, [366] didn't you? A. Yes, I did.

Q. You have testified it is in your handwriting?

A. Yes, sir.

Q. You made the deductions?

A. That is right.

Q. Now, you took them upstairs to his room, and showed it to him. He says, "Well done, keep it up;" is that it? A. He didn't say anything.

Q. He didn't say anything after you showed it to him. You said, "Here, Mr. Rau, I have a perfect record of your cheating."

Mr. Gardner: If the Court please, there has been no such testimony as "Here Mr. Rau, here is a per-

(Testimony of Robert R. Webb.)

fect record of your cheating," or anything like that. He is trying to put words in the witness' mouth, and it is arguing.

The Court: It is cross-examination, but it is, I think, it is unfair. Proceed.

Mr. Simpson: Perhaps, your Honor——

The Court: I think you were, you are taking liberties with his testimony, when you undertake to characterize it, as you do.

Mr. Simpson: All right. Then I will cover it this way then. [367]

Q. (By Mr. Simpson): You took the records up to his room, did you?

A. On occasions. Mr. Rau was, sometimes he would stay in late, maybe I wouldn't—at times I wouldn't know whether he had been down at all that day.

Q. I have it down here, I made a note. We will go back and get the reporter to read it.

The books were taken up to his room, to Mr. Rau's room.

A. There was occasions when they were; yes, sir.

Q. You took them up then?

A. On occasions, yes, sir.

Q. Well now, after you made the entries on those daily sheets, you said you never saw them again? A. They were given to Miss Goldstein.

Q. All right. Now——

A. This sheet——

Q. What did you do, did you give them to Miss

(Testimony of Robert R. Webb.)

Goldstein after you made the entries, or did you take them upstairs and show them to Mr. Rau?

A. I, if I showed it to Mr. Rau, I would have to give it to Miss Goldstein; otherwise, she wouldn't have, couldn't have gotten it.

The Court: Who got them first?

The Witness: Mr. Rau. [368]

The Court: Was that on most occasions?

The Witness: Yes, sir.

The Court: Then they ultimately wound up in Miss Goldstein's hands?

The Witness: Yes, sir.

Q. (By Mr. Simpson): Now, you showed them to Mr. Rau first, so he saw that you were keeping a record of his cheating. When you handed it to him, what, if anything, did he say when he saw that perfect record that you had made?

A. He was interested in how much money, what the receipts were and what the pay outs were, and there was nothing said about that, as I remember.

Q. Well, couldn't you have shown him another record showing him what the receipts were, the daily records that you kept, they were in evidence for the bar and the cafe, couldn't you have shown him that?

A. Yes, I could.

Q. Well then, why is he interested in the daily sheets of the French Cafe?

A. Naturally, Mr. Rau would like to see what was taken in in the French Cafe and in the bar.

Q. Well, I thought that was reflected—

(Testimony of Robert R. Webb.)

A. It wasn't one day that he didn't see the whole record. [369]

Q. I thought that you kept a perfect record of that in these date books, showing both operations, the bar and the cafe? Let's just take Respondent's Exhibit O, just any date. Here is Wednesday, July 7.

A. That is right.

Q. And that is for 1943, the receipts for the bar \$256.07, for the cafe \$383.09. Now, if he was interested in receipts, couldn't you have shown him that?

A. That would not give him a true picture of the receipts; the reason I didn't show him that.

Q. Wouldn't give him a true picture of the receipts?

A. No. If I showed him \$256.07, he wouldn't know what that meant.

Q. He wouldn't know that meant receipts from the bar, if you told him?

A. I could tell him that, but he wouldn't, naturally he would want to see what the, see the tapes and the pay outs and everything.

Q. Oh, he audited everything after you finished?

A. He would want to look at them, see what it was.

Q. Did he add them up?

A. I don't know whether he added them up. I gave it to him.

Q. You gave him all those tapes?

A. Gave him the tape, and I would write on it— [370] Well, this record right here, I would give it to him, take it right—

(Testimony of Robert R. Webb.)

The Court: By this record right here, you are referring to Exhibit M?

The Witness: Yes, your Honor.

Q. (By Mr. Simpson): Now, he had the tapes, you gave him the tapes; what did they show to him?

A. The tapes showed him the total amount of receipts for the day.

Q. For the day.

The Court: You mean actual receipts?

The Witness: Actual receipts; yes, your Honor.

Q. (By Mr. Simpson): Then how did you show him the pay outs?

A. Well, the restaurant, here was the pay outs. If there is anything paid out in the bar, practically everything in the bar was paid by check. There was very little pay out, just a matter of little incidentals like a box of limes, or ice, or something like that. That would be deducted from the total receipts.

The Court: That is the bar?

The Witness: Yes, sir.

The Court: What about the French Cafe?

The Witness: The French Cafe was all on here. [371]

The Court: On here, you are referring to what?

The Witness: The paid outs.

The Court: You are referring to, again to the sheets on Exhibit M, which is before you?

The Witness: Yes, sir.

The Court: There will be a short recess.

(Short recess.)

(Testimony of Robert R. Webb.)

Q. (By Mr. Simpson): Mr. Webb, when you took the daily sheets of the French Cafe up to Mr. Rau, did you also take, at that time, the tapes?

A. Yes, sir.

Q. Did you take any cancelled checks?

A. Any cancelled checks?

Q. Yes. A. Not that I recall.

Q. Did you take any journal records?

A. No, sir.

Q. Take a general ledger? A. No, sir.

Q. Now, exactly what did you take up to Mr. Rau's room after you made the entries on the daily sheets for the French Cafe?

A. Just the cash sheets from the French Cafe, with the tapes. [372]

Q. With the tapes. Did you leave the tapes in his room? A. Yes, sir.

Q. Did you leave the daily sheets in his room?

A. I don't believe I left this daily sheet in his room. I would bring it down and either give it to Miss Goldstein, or put it where she could pick it up.

Q. But you made certain that Mr. Rau saw the amount taken off, according to your records?

A. It would be given just exactly the way it is here; yes, sir.

Q. He knew that you were keeping this detailed account of the falsification of the receipts?

A. Yes, sir.

Q. He knew that. Now, did he tell you to continue that practice? A. Yes, sir.

Q. So from that time forward, by the way, let's

(Testimony of Robert R. Webb.)

establish the first time that Mr. Rau knew that you were keeping this detailed account of falsifying the records. A. It would be sometime in 1942.

Q. Sometime in 1942? A. Or prior to that.

Q. Prior to 1942 he knew that you were keeping that record of the cheating? [373]

A. I did not keep the records. I just gave it to him and that was all. He knew that I took off that much money.

Q. Now, at the bar, I am not sure that I understand your testimony. I don't want to have any mistakes about it. As to the expenses that were paid at the bar, paid outs, you said he was interested in that, too?

A. The pay outs in the bar were practically all by check, with the exception of ice and incidentals.

Q. So that you would have cash pay outs at the bar in small amounts? A. Yes, sir.

Q. Now, when you had the other expenses at the bar, you said they were paid by check and did you make the checks payable to the supplier?

A. Yes, sir.

Q. You wrote the check out to the supplier's name? A. Yes, sir.

Q At the bar. Mr. Webb, I have counted these checks personally. I think that we can safely say there are 159 checks, the Southern Wine and Liquor Company for the year 1944. I ask you to take a look at those checks, please, and tell me if your signature appears thereon as the drawer of these checks, please? [374]

(Testimony of Robert R. Webb.)

A. Yes, sir, all but two. I think Mr. Rau's name is on them.

Mr. Gardner: Would you speak up, please?

Mr. Simpson: So the Reporter can get it.

The Witness: I think I saw one for Mr. Rau in here. There it is.

Q. (By Mr. Simpson): Is that Mr. Rau's signature? A. Yes; it is.

Q. Here is another one with Mr. Rau's signature, check No. 79, dated March 18, 1944; is that Mr. Rau's signature? A. Yes, sir.

Q. The other one you just identified as Mr. Rau's signature, check No. 110, dated April 1, 1944, on the Southern Wine and Liquor Company?

A. Yes, sir.

Q. Both of those checks. I ask you again to look at this group of checks now, totaling 157, run through them, if you will, and tell me the name, if any, of the payee of the check?

A. I don't see any payees on here.

Q. This, the checks were all made payable to cash? A. Well, that is right.

Q. Can you, by looking at those checks, explain the [375] purpose for which they were drawn?

A. You would have to get the stubs. I can't explain it; no, sir.

Q. In other words, if you were furnished with the stubs, you could explain these checks that are drawn to cash?

A. If I could look at the stubs, yes.

(Testimony of Robert R. Webb.)

Q. Let's see if I can get the stubs for you of those checks.

Would you mark this, please, as Petitioner's Exhibit next in order?

The Clerk: Petitioner's Exhibit 26 marked for identification.

(The document above referred to was marked Petitioner's Exhibit No. 26 for identification.)

Q. (By Mr. Simpson): Mr. Webb, I hand you Petitioner's Exhibit 26 for identification, being check stub, Southern Wine and Liquor Company, and direct your attention to check stub 260, and ask if that is your handwriting? A. It is.

Q. Now, the notation on that check stub is to cash? A. That is right.

Q. For supplies. Now, I ask you to look at [376] the cancelled check, itself, No. 260, on June 2, 1944, on the Southern Wine and Liquor Company, paid order to the—payable of cash in the amount of \$8.20, being the amount noted on the check stub?

A. Yes, sir.

Q. And ask you now to tell, or state who the supplier was who received the \$8.20?

A. Well, the only explanation I have is the same condition as was in the French Cafe, would have me make out a check for the supplies that were paid out that day.

Q. Did you go upstairs and ask permission to draw this check to cash, check No. 260 for \$8.20 on

(Testimony of Robert R. Webb.)

June 2, 1944, and get permission to draw that check from Mr. Rau?

A. He would tell me to draw a check for supplies, not for every—not that one for every day, for any supplies paid out that would amount to, maybe ice, and little incidentals, that were paid out that day.

I would deduct that from the total receipts and he would see it on his statement.

Q. Then instead of paying the incidentals out of the cash register for ice and few little things like that, you drew a check for that?

A. It was paid cash from the register, but that amount then would be made, a check made out for that amount and deducted from the total.

Q. And please explain the purpose of following that [377] practice of paying the cash out of the cash register, and then drawing the check to cash in that amount of money?

A. The bartender would pay it out in cash. He would give me the tickets for ice, or whatever it was. I would take the vouchers to Mr. Rau every day, also with a tape and the amount of the receipts, what each bartender had taken in, also the ticket, the cash register drew, with the amount that each bartender had taken in. And deduct the \$8.20 as supplies.

Q. Yes. Now, how did you determine that you should draw a check for \$8.20 for supplies on that day?

A. Well, that was evidently the amount of cash

(Testimony of Robert R. Webb.)

paid out from the bar. We paid for limes, lemons, little odds and ends, ice, every day.

Q. From whom did you get that information?

Mr. Gardner: If the Court please——

The Witness: From the vouchers in the bar.

Mr. Gardner: If the Court please, he has answered that same thing three times by now, and this is just becoming repetition after repetition.

I object to the question at this time, going into the same thing over and over and over again.

The Court: It is repetitious.

Mr. Simpson: To a certain extent perhaps, but not entirely so. This witness testified that he drew checks [378] to the suppliers.

The Court: He didn't say to the suppliers; he said for supplies.

Mr. Simpson: But I asked him also if he drew check to the suppliers for the merchandise that was delivered, and he said, yes. Now, I want to find out whether or not he also took this information to Mr. Rau.

The Court: Proceed.

The Witness: The bartender, the bartender——

The Court: Let the witness complete his answer.

The Witness: The bartender, if he paid out \$3 for ice, he would have a voucher in the cash register, what he paid out. Or any other item he paid out.

I would get the vouchers with the cash, take the vouchers up to Mr. Rau with all the other details and if it amounted to \$8.20, I would make the check out for \$8.20

(Testimony of Robert R. Webb.)

He could check over this book every day, any time. He had it right there in front of him.

The Court: This book was what?

Mr. Simpson: Check stub book, Petitioner's Exhibit for identification 26.

I will offer this into evidence at this time, your Honor, so that there won't be any——

Mr. Gardner: I didn't understand that that had been [379] marked, your Honor.

Mr. Simpson: Yes.

Mr. Gardner: No objection, your Honor.

The Court: Admitted.

(The document heretofore marked for identification as Petitioner's Exhibit No. 26, was received in evidence.)

Mr. Simpson: Now, what I wanted to get to from Mr. Webb, was that you got the permission from Mr. Rau to write these checks, that we are talking about, demonstrated by the check stub for the payment of supplies at the bar.

The Witness: Yes, sir.

Q. (By Mr. Simpson): And he knew that?

A. He saw that every day; yes, sir.

Q. Every day?

A. Every day he was there; yes, sir.

Q. Did you take the vouchers themselves up to him? A. Yes, sir.

Q. There might be half a dozen, a total, that might make the total of \$8.20? A. Yes, sir.

Q. He looked them over? A. Yes, sir.

(Testimony of Robert R. Webb.)

Q. And then told you to draw the check to cash?

A. He didn't tell me every day. He told me when we [380] started to do that, and I followed the customary——

Q. He had the tapes in front of him, also?

A. Yes.

Q. And the daily sheets from the French Cafe?

A. Yes, sir.

Q. Now, we established that you took those tapes up to him, the vouchers, and he told you to draw a check for that?

He has daily receipts of the French Cafe, showed those to him, and he made no observation or comment when you made him—that you kept the record in the amount not reported as receipts?

A. No, no observation.

Q. And you followed that same practice in 1943, did you, Mr. Webb?

A. Yes, sir.

Q. 1944?

A. Yes, sir.

Q. 1945?

A. Yes, sir.

Q. And 1946?

A. Yes, sir.

Q. And 1947?

A. Yes, sir.

Q. And at no time did he make any comment about the [381] record that you had made in the daily sheets, showing the amount falsified?

A. Well, we would discuss business and discuss a lot of things, probably, about what was taken in and everything; yes.

Q. It did not occur to you at all to tell him that that was something he shouldn't do, that he would be in trouble with his Government?

A. Yes.

(Testimony of Robert R. Webb.)

Q. Did you feel that you might be in trouble with the Government, aiding and abetting in that?

A. Well, at the time it didn't really occur to me. I didn't think I was responsible for it, but I understand now that I am.

Q. You understand now that you are responsible? A. Yes, sir.

Q. Has any action been taken against you on this? A. No, sir.

Q. In connection with your acts?

A. No, sir.

Q. No, sir.

I have no further questions, your Honor.

Redirect Examination

By Mr. Gardner:

Q. Mr. Webb, referring to Exhibit 20, under date [382] of December 16, 1943, would you refer to that page and state whether or not your handwriting appears at the bottom of that page?

A. That is my handwriting.

Q. And referring now specifically to the figure 4720, could you tell us what that figure represents?

A. It represents supplies.

Q. Supplies? A. Yes, sir.

Q. Is that the amount that you would write a check for, to cash? A. Yes, sir.

Q. That you previously testified to in explaining these transactions; is that correct, sir?

A. That is correct.

(Testimony of Robert R. Webb.)

Q. And I would like to have this marked as Respondent's next in order, please.

The Clerk: Respondent's Exhibit T marked for identification.

(The document above referred to was marked Respondent's Exhibit T for identification.)

Mr. Simpson: May I see that, Mr. Gardner, please?

Mr. Gardner: Yes, excuse me.

Q. (By Mr. Gardner): Mr. Webb, I hand you what has been marked [383] Exhibit T for identification, and ask whether or not you can identify this book? A. Yes, sir.

Q. What is that book, sir?

A. That is the check book of the French Cafe.

Q. Is it the check book, or does it have only the check stubs? A. Check stubs.

Q. For the French Cafe. And for what numbers do you have in there, sir?

A. From No. 3201 to 3397.

Q. And that covers a period, does it not, of approximately December 15 of 1943 to January 6 of 1944; is that correct, sir? A. Yes, sir.

Q. Now, referring to check stub No. 3242, under date of December 17, 1943, would you state whether or not your handwriting appears on that check stub, sir? A. Yes, sir.

Q. And what did you write on that check stub?

A. Wrote cash to cash supplies, \$47.20.

Q. Is that the same amount that is shown on

(Testimony of Robert R. Webb.)

Exhibit 20, sir, under date of December 16, 1943, referring to the bottom of the page where you put in your summary of the day's receipts? [384]

A. That is the same amount; yes, sir.

Q. This is the amount that you previously testified to, that you prepared a check to cash and marked it supplies; is that correct, sir?

A. Yes, sir.

Mr. Simpson: If your Honor please, I don't know what the purpose of this questioning is, because I think that our stipulation has covered it, and I think Mr. Gardner is going to go back, practically everything that we agreed to; isn't that so, Mr. Gardner?

Mr. Gardner: That is not my intention, your Honor. I intend to ask one or two instances, and ask if this was the practice throughout the proceeding.

The Court: Proceed.

Mr. Gardner: Now, at this time, I would like to offer in evidence Respondent's Exhibit T.

Mr. Simpson: No objection.

The Court: Admitted.

(The document heretofore marked as Respondent's Exhibit T for identification, was received in evidence.)

Q. (By Mr. Gardner) This is Exhibit T, Mr. Webb, referring to the daily sheets for the year 1944, that are in evidence as Exhibit 21, going to

(Testimony of Robert R. Webb.)

the sheet for January 5, 1944, do you see your handwriting at the bottom of that page, sir? [385]

A. This is all my handwriting, this right-hand side of the page.

The Court: Right-hand side at the bottom?

The Witness: At the bottom.

Q. (By Mr. Gardner): Right-hand side at the bottom? A. Yes, sir.

Q. Now, there is a figure there, sir, in the amount of \$62.30, would you state what that figure is, sir? A. That was for supplies.

Q. For supplies. Did you do anything else in connection with that figure, did you write a check in that amount?

A. I wrote a check in the amount of \$62.30 and marked it supplies.

Q. Now, referring to Exhibit T, under date of January 6, 1944, check stub No. 3394, does your handwriting appear thereon?

A. That is all my handwriting.

Q. That is all your handwriting. What does that stub say, sir?

A. It says 11/6/1944, cash, supplies, \$62.30.

Q. Now, Mr. Webb, in order to save time, would you state now whether or not this same practice continued throughout the year 1944? [386]

A. Yes, sir.

Q. Throughout the year 1945?

A. Yes, sir.

Q. Throughout the year 1946?

A. Not all through the year 1946.

(Testimony of Robert R. Webb.)

Q. Up until what date, sir?

A. Well, up until—I am not sure of the month.

Q. There was a partnership formed in 1946?

A. There was a partnership formed.

Q. Up until that partnership was formed, you did that same series of acts? A. Yes, sir.

Q. Relating to the drawing of check to supplies?

A. Yes, sir.

Q. And recording—

The Court: Check to cash.

Mr. Gardner: Excuse me, check to cash.

The Witness: Yes, sir.

Q. (By Mr. Gardner): And marking it for supplies and recording—

A. Yes, sir.

Q. And recording it on that daily sheet of the French Cafe? A. Yes, sir.

Q. Now, did that continue throughout the year 1943, [387] also, sir? A. Yes, sir.

Q. Throughout the year 1942?

A. Yes, sir.

Q. At least when you started this practice in 1942? A. Yes, sir.

The Court: Now, when you cashed such a check, what did you do with the proceeds of it, that you received?

A. The proceeds were added onto the receipts for the bank. If the receipts were \$300 and I wrote a check out for \$62.30, I would make it \$362.30, to deposit in the bank.

(Testimony of Robert R. Webb.)

The Court: You would add them then to the receipts for the particular day of the French Cafe?

A. Yes, your Honor.

The Court: And they would ultimately find their way into deposits into a bank, into the account for the French Cafe?

The Witness: Yes, sir.

Q. (By Mr. Gardner): Are those deposits shown in Exhibits R, O, N, P, S, and Q?

A. Yes, sir.

Q. Would you examine them, please, sir?

Mr. Simpson: If your Honor please, I thought this had been established already on direct testimony that the [388] receipts were recorded in the year books.

Mr. Gardner: Let the record show that the witness examined——

The Witness: Yes.

Mr. Gardner: Just named and stated that the receipts were recorded in these books, and that in instances in which you wrote out a check to cash, charged it as supplies, that increased the receipts for that day.

The Witness: Yes, sir, that is correct.

Q. (By Mr. Gardner): And the increased amount was shown in the exhibits just named; is that correct, sir? A. Yes, sir.

Mr. Gardner: I have no further questions of this witness, your Honor.

Mr. Simpson: Just one previous question. I think

(Testimony of Robert R. Webb.)

perhaps Mr. Gardner has clarified it, though, and that is this:

Recross-Examination

By Mr. Simpson:

Q. These daily sheets in which the receipts were increased by the various amounts to which you have testified, for instance, 3335 on September 20, was not just for the bank, it also reflected increase in the receipts for that day? A. Yes, sir. [389]

Q. And that that amount was then transposed and recorded in the date books? A. Yes, sir.

Mr. Simpson: Thank you. I have no further questions.

Mr. Gardner: I have no further questions to ask of this witness.

The Court: You may step down.

The Witness: Thank you.

(Witness excused.)

Mr. Gardner: I would like to ask a further favor of this Court. I have no further questions for this witness, and if Mr. Simpson anticipates using him again or does not, I would like this witness to be allowed to be excused.

Mr. Simpson: At this time, your Honor, I see no need to recall the witness, but I would like to reserve the right to do that, if it becomes necessary. At this time, I can't see any occasion for it.

The Court: Do you wish him to be excused?

Mr. Simpson: Yes.

The Court: He may be excused.

Mr. Gardner: Thank you, your Honor.

The Court: We will reconvene at 2:00 o'clock.

(Whereupon, at 12:40 p.m., the hearing in the above-entitled matter was recessed until 2:00 o'clock of the same day.) [390]

Afternoon Session—2:00 P.M.

Mr. Simpson: May it please the Court, Mr. Gardner has graciously condescended to permit me to put two witnesses on out of turn. With your permission, I call them now. Dr. Seymour Strongin.

SEYMOUR STRONGIN

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: Would you be seated. State your name and address, sir.

The Witness: Dr. Seymour Strongin, Bakersfield, California.

The Clerk: Would you spell it?

The Witness: S-e-y-m-o-u-r S-t-r-o-n-g-i-n.

The Clerk: Thank you.

Direct Examination

By Mr. Simpson:

Q. Doctor, you have already stated your full name and address. I ask you if you will state what is your profession.

A. I am a doctor of medicine.

(Testimony of Seymour Strongin.)

Q. By that do you mean that you are a general practitioner? A. Yes, sir. [391]

Q. Doctor, have you specialized in any particular branch of medicine?

A. No, sir. I do general practice.

Q. General practice. And for how long a period of time have you practiced your profession?

A. For 30 years in Kern County.

Q. Have you practiced in the town of Bakersfield? A. Some 27 and a half years.

Q. During that time, did you have occasion to treat Mr. Walter F. Rau, Sr., professionally?

A. Yes, sir, I have.

Q. Can you state to the Court when your treatments began?

A. I saw Mr. Rau on at least six occasions; first time, August 24, 1942, and on the last occasion on September 21, 1945.

Q. Now, can you state the nature of the treatment that you prescribed or advised for Mr. Rau?

A. I treated him for a multiplicity of conditions. At the time I first saw him, he had an alcoholic neuritis and arthritis, a thrombophelebitis and myocarditis.

During the course of my seeing him, he also developed myocardio heart failure—that is heart failure—and he also developed a nephritis, Bright's disease.

Q. Excuse me. Go ahead, sir. [392]

A. During the times I saw him, the one thing

(Testimony of Seymour Strongin.)

that more or less was present on all the occasions was a considerable degree of alcoholism.

Q. After, when you saw him, was he under the influence of alcohol?

A. Mr. Rau was under the influence of alcohol on every occasion that I saw him.

Q. Doctor, will you state your professional opinion, the excessive use of alcohol and its effect upon the person's brain, if any?

A. I am convinced that in his condition the use of alcohol caused a good degree of mental deterioration. He was inebriated on all the times I saw him. He was shaky, excited, inability to reason things out, wouldn't follow instructions, forgot from time to time what I told him to do; he wasn't a very cooperative patient, primarily, I think due to the fact that he was drunk most of the time.

Q. Now, would his age be a factor in combination with the excessive use of alcohol as to any general mental habilitation?

A. The older he got, undoubtedly the more age did become a factor, that is his nephritis and his circulatory deterioration in itself, could cause mental deterioration; add onto that the alcoholism and you have a sort of double [393] impact.

Q. Well now, can you state whether or not you observed a gradual decline in his physical health, as well as his mental health?

A. During the three years I saw him, there was definitely a decline in his physical health.

(Testimony of Seymour Strongin.)

Q. Now, let's cover the years that you examined him again. A. '42 to '45.

Q. Doctor, in your professional opinion, was Mr. Rau mentally capable or competent to manage his affairs?

Mr. Gardner: If the Court please, I object to that question on this grounds, while the doctor is well qualified as a medical man, he has stated that he is a general practitioner, there has been no foundation laid that the witness is an expert as to the manners of the mind, mental competency and that sort of thing. And I have an idea that that is the purpose of this question, is to get an opinion of an expert.

I submit to the Court that he is not, has not laid a proper foundation for such a question.

The Court: I will receive it as the opinion of a general practitioner, but not as the opinion of a man who has devoted himself to mental diseases.

Q. (By Mr. Simpson): [394] Doctor, with respect to a man's mental condition, does the excessive use of alcohol have an adverse, injurious effect upon his brain?

A. Definitely, alcohol is a toxic agent. It causes a certain amount of what is chemically regarded as intoxication, and that is more or less demonstrated in a manner of speaking, by an inability to reason and act clearly.

Q. Now, will you state again, sir, whether or not, in your opinion that Mr. Rau, by the use of alcohol

(Testimony of Seymour Strongin.)

to excess at his age would make him subject to the influence or wishes of other persons around him?

A. I have no doubt that it did make him subject to the wishes of others around him.

Mr. Simpson: I have no further questions.

Cross-Examination

By Mr. Gardner:

Q. Dr. Strong—

A. Strongin, Strongin, S-t-r-o-n-g-i-n.

Q. Thank you, sir.

You stated I believe that you saw Mr. Rau during the years of 1942 and 1945; would you state once again how many times you saw him?

A. I saw him at least six times that I have record of. [395]

* * *

Q. Now, as to whether or not he was subject to the will of others, that is strictly conjecture on your part, isn't it, doctor? A. Definitely.

Q. You don't know that of your own knowledge, do you, sir?

A. I can't say that I do; no, sir. [401]

* * *

JOHN J. McCARTHY

called as a witness by and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name and address, please, sir.

The Witness: John J. McCarthy. 3130 Union Avenue, Bakersfield, California.

The Clerk: Your last name is spelled M-c-C-a-r-t-h-y?

The Witness: Yes, sir.

Direct Examination

By Mr. Simpson:

Q. You have already stated your full name and address, doctor. Now, I would like to ask you, are you a doctor of medicine? A. Yes, sir.

Q. Are you a general practitioner?

A. Yes, sir.

Q. And for how many years have you been a doctor of medicine? A. Since 1934.

Q. And for how many of those years have you practiced in your profession in Bakersfield; before you answer that, where have you practiced your profession?

A. The past, since 1937, past 21 years, in Bakersfield, since 1937; and then of course, I had my internship before that. [405]

Q. You practiced for approximately 27 years in Bakersfield? A. No.

Q. Have you specialized in any—

(Testimony of John J. McCarthy.)

A. Beg your pardon. '37, that will be 21 years.

Q. Yes. Have you specialized in any particular branch of your profession? A. No.

Mr. Gardner: I didn't get that. Excuse me.

The Witness: No.

Mr. Gardner: Thank you.

Q. (By Mr. Simpson): During the time that you were practicing your profession in Bakersfield, did there come an occasion when you were called upon to treat Mr. Walter F. Rau, Sr.?

A. Yes.

Q. Do you have any records, or do you recall when you were first called upon to treat Mr. Rau?

A. My recollecting back to first treating him in 1946; my records show from July of 1947 until the time he expired.

Q. The records of July, 1947, until he died, the recollection is that you began your treatments however one year prior to that?

A. At least six months, over six months, I know it was before Christmas, so, nearly a year, yes. [406]

Q. Nearly a year, 1946. Can you now state either from your records, or based on your recollection the number of times that you treated Mr. Rau professionally?

A. Professionally I would sometimes see him every day; as the years went on, of course, I saw him more often. At first, I might see him, saw him about every day for several weeks, and then at least once or twice a month.

Q. Thereafter?

(Testimony of John J. McCarthy.)

A. And then often daily or twice daily, different spaces of his illness.

Q. Do you remember, do your records show or can you recall the nature of Mr. Rau's illness and what you prescribed for him?

A. Well, in 1946, the reason I was called to the hotel to see him was because of a marked phlebitis of the lower legs. That is inflammation and clotting in the veins.

At that time he was also known to have—he had a high blood pressure, hypertension, and some congestive heart failure, and chronic nephritis, and marked arteriosclerosis.

Q. Did you treat him, did you treat him at his home? Where was he residing when you treated him?

A. When I first treated him, he was residing in the hotel. My records go back to the time I saw him in the home. I don't know if I have my records while he was in the hotel. [407]

Q. Is that the Southern Hotel?

A. Yes, sir.

Q. Now, when you saw him at the Southern Hotel, you were called in to treat him, did you observe whether or not he was under the influence of alcohol?

A. I have been in to see him in the morning, in the middle of the night, and in the afternoon, I don't believe there is any time in those first few years that he wasn't at least somewhat under the influence of alcohol.

(Testimony of John J. McCarthy.)

Q. Have you examined the records, not only of your own, but from any other source, which would advise you of the condition that Mr. Rau had prior to the time that you actually began your treatment of him?

A. Well, I hospitalized him at Mercy Hospital in Bakersfield in December of 1947, because of a stroke.

Q. Because of a stroke? A. A stroke.

Q. A stroke.

The Court: Was that the first time you had hospitalized him?

The Witness: Yes, it was. Wait a minute, let me make sure of that, sir.

Yes, that is the first time I hospitalized him. At that time, of course, I had reason to look back on these [408] records, and to see about past history, and I ran across some very—he was treated by Dr. Goodall.

Mr. Gardner: If the Court please, I object to relating to treatment by anyone other than Dr. McCarthy.

Mr. Simpson: If your Honor please, I think this witness will testify that he examined the records of a public institution for the purpose of determining any medical history of his patient, past history.

I think he is certainly qualified to testify with respect to what he found in the hospital records.

Mr. Gardner: I object to this on the ground that that is hearsay, there is nothing to establish these records as being accurate, no way we know of that—

(Testimony of John J. McCarthy.)

how they are kept, just how the entries were made in them.

I object to any testimony relating to these records whatsoever.

The Court: I presume that hospital records would be admissible in evidence if properly, if the foundation is properly laid for them. The testimony here, the evidence now being presented here, goes one step beyond that. It undertakes to describe the contents of those records by secondary means.

Mr. Simpson: If your Honor please, I think——

The Court: The—are the records in court?

Mr. Simpson: No. I have asked him if he had a [409] record or examined any record of past history of this man. Now, he can certainly answer that.

Now, if I ask him in connection with that past history did it confirm his own examination of this man, now, he would be able to testify to that, certainly.

The Court: I would receive such records, themselves, in evidence, if there was proper foundation laid for them, but I don't know what kind of records this witness looked at. For all I know, he might have looked at the right kind of records, or he might have looked at the wrong kind of records, as far as admissibility is concerned.

Mr. Simpson: Then let me attempt to develop what the records were and then with leave of Court——

The Court: Then you are faced with the prob-

(Testimony of John J. McCarthy.)

lem as to whether or not you have complied with the best evidence rule of bringing them in.

Mr. Simpson: Well then, if your Honor please, I request that the records be kept open until we are able to obtain these records.

The Court: This request is denied. You are supposed to prepare your case and present admissible evidence.

Mr. Simpson: That is true. I learned today for the first time, of course, that there were some other records available at an earlier date, that were maintained in a public institution. So, I have not been able to find that out [410] until today.

The Court: If you obtain them during the course of the trial, I will let you present them at any time during the course of the trial. The record will not be kept open.

It is up to you to prepare your case and present admissible evidence.

Proceed.

Q. (By Mr. Simpson): Doctor, prior to the time that you treated Mr. Rau, professionally, did you have occasion, or were there any occasions on which you saw him under the influence of alcohol?

A. Well, I came to Bakersfield in 1937, and my office was directly across the street from the Southern Hotel. I became acquainted with Mr. Rau at that time, and his family. And had not observed him professionally, but just in a friendly manner. I found contact with him quite often, and saw him almost daily the first few years there.

(Testimony of John J. McCarthy.)

Q. During those times, did you observe him under the influence of alcohol?

A. I would say that most of the time, that as near as I could determine from his gait and speech, that he had been drinking.

Q. Now, subsequent to the time that you began to treat Mr. Rau, did you observe a gradual decline in his [411] mental condition?

A. From the time I first started treating him, there was a definite decline, particularly from the time that this stroke I was telling you about, that he had December of 1947, but there had been even before that time, he had been, in making calls on him in the room or the hotel, I was talking to him, he would often break out crying, and we couldn't get very far with him on many of these occasions.

I have known, too, about that time that he was, when he started water, unable to control his urine, and stools, and I have seen him, the nurse cleaning up the bed after him, acting nurse.

The Court: Could you fix the—as near as you can, the month and the year in which this latter began?

The Witness: Well, it was prior to '46. I don't know as I could state it any closer than that.

The Court: I thought you hadn't seem him professionally before '46?

A. I hadn't professionally.

The Court: How would you know about his incontinence?

The Witness: Oh, the incontinent?

(Testimony of John J. McCarthy.)

The Court: Yes.

The Witness: That started in the latter part of '46, and was more marked in '47, until later he wasn't able to control them at all. I didn't know about that. I [412] thought you meant the mental degeneration.

The Court: At what point did his inability to control his natural functions commence?

The Witness: Well, sometimes this wasn't just an inability, it was perverseness and his way of, I think, getting back at the nurse a lot of times.

The Court: I didn't hear your answer clearly.

The Witness: I think at times that this was purely perverseness on his part that to—about the only way he could get back at the nurse, for anything he suspected, anything that he didn't like the way she might have done to him.

Q. (By Mr. Simpson): Doctor, with respect to Mr. Rau's physical condition, can you state if he was required, in order to move around, did he use a wheelchair? A. When, did you say?

Q. Yes. A. Of if he was; yes.

Q. Can you state the year in which he was required to use a wheelchair?

A. Well, I know he was in '47. I am not sure about '46, whether he had one in the hotel or not. I am quite sure he did, but I wouldn't swear to that. I know he had one from the time he moved out to his home. [413]

Q. Do you know whether his room was on the first floor of the hotel or second floor?

(Testimony of John J. McCarthy.)

A. It was second or third. I think it was second.

Q. Did he use an elevator? A. Yes.

Q. Go to downstairs? A. Yes.

Q. Doctor, in your opinion, do you think that Mr. Rau was competent to manage his affairs after you began your treatment in 1946?

Mr. Gardner: If the Court please, I would like to make the same objection to the testimony of this witness that I made to the testimony of the prior witness, that is Dr. Strongin, on the grounds that, as I understand it, this is a question calling for an opinion by an expert, and we have had no foundation laid as to this witness being an expert of the mind.

The Court: I will receive his opinion with full awareness, however, that he has not been qualified as an expert on mental diseases, but with the knowledge, however, that his opinion is probably worth more than that of an average layman.

Mr. Simpson: I have no further questions.

The Court: The witness may answer.

Mr. Simpson: Oh, yes, I am sorry. [414]

Q. (By Mr. Simpson): You may answer that question, doctor, almost forgot that.

A. Well, it is my opinion, due to the hypertension, the arteriosclerosis, the senility—he was 73 years of age when he had that stroke—in my physical examination at the hospital, at that time, which I didn't get a chance to—

Mr. Gardner: Excuse me, are you referring to one of those records?

(Testimony of John J. McCarthy.)

The Witness: No, this is my own.

Mr. Gardner: Excuse me.

The Witness: My own record of the first hospital call, he had an arcus senilis around each pupil, which is a physical indication of marked arteriosclerosis, probably beyond his years, and with the alcoholic history over a long period of time, I am sure that during the time I saw him, and he progressively got worse, that he was not able to rationally take care of his business.

Mr. Simpson: Thank you, I have no further questions.

Cross-Examination

By Mr. Gardner:

Q. Now, what was the——

The Court: Was he in your judgment, was he sufficiently rational however, that you would have felt justified in [415] cashing a check that he might have given you for your fee?

The Witness: Well, I believe so, as long as the bank would honor it. But I seldom did. I don't believe I ever did receive a check from him, unless it was sent to the office.

The Court: Would you have felt justified in taking your fee in cash from him?

The Witness: I did. The reason I got it from the desk, or I think I have got it from him, too, or from his nurse. I think during those first years that I would have, I am not sure that I did. I don't see that it was unethical.

(Testimony of John J. McCarthy.)

The Court: I put the question to you, not as an ethical question, but simply to test your judgement as to how competent or incompetent you thought he was. And I ask you whether you think he was so incompetent that you would not have felt justified in taking, in cashing a check if he had given you one?

The Witness: I think I would have accepted it the first year or two.

The Court: That is in 1946 and '47?

The Witness: Yes, sir.

Q. (By Mr. Gardner): It was your statement that you would accept the check, doctor?

A. Yes, sir. [416]

Q. In those years, 1946 and 1947?

A. Yes, sir.

Q. I believe you had testified that in, sometime in 1946 apparently, Mr. Rau apparently lost control of his natural functions; is that true, doctor?

A. Yes. I did state that. I am not so sure that he lost, in viewing the testimony, I am not so sure that he lost control of them at that time, that he did do his natural functions in bed. How well he got in trouble, I don't know.

Q. You don't know? A. No, sir.

Q. In fact, you rather suspect that he was antagonistic or had some grievance against the nurse; isn't that what you testified? A. Oh, sure.

Q. Would you say that Mr. Rau was a rather strong-willed man, sir?

(Testimony of John J. McCarthy.)

A. Depends on what you mean by strong-willed. If you mean determined——

Q. Yes.

A. I would say he was a determined man.

Q. A very determined man. And he exhibited this determination during this period, 1946 and 1947, did he not, sir? [417]

A. Yes, he did.

Q. I believe you testified that you first knew him around 1937; is that correct, doctor?

A. Yes, sir.

Q. And your office is just across the street from the hotel, wasn't it?

A. Yes, sir.

Q. Consequently, I imagine—did you dine at the hotel?

A. Yes, sir.

Q. Did you ever visit the bar at the hotel?

A. Yes.

Q. Did you ever have any drinks with Mr. Rau?

A. Yes.

Q. Did you consider him good company?

A. No.

Q. You didn't consider him good company. Did he talk too much?

A. No. He wasn't——

Mr. Simpson: If your Honor please, I think this goes way beyond the scope of the direct examination. It is opening up something that is not even pertinent to this, whether or not Mr. Rau was good company or anything else; way beyond the scope of the direct examination.

Mr. Gardner: If the Court please, there has been [418] testimony here that, indicating that Mr. Rau was drunk all the time, or at least, on the occa-

(Testimony of John J. McCarthy.)

sions when the doctor would see him. I would like to find out just what the doctor considers as being drunk. I would like to find out just what being under the influence of liquor is. I don't really know.

The Court: Proceed.

Mr. Gardner: Would you read the question, please?

(Record read.)

The Witness: He wasn't a loquacious man.

Q. (By Mr. Gardner): He wasn't a loquacious man? A. No.

Q. How many drinks would you have with him when you would see him in the bar, say in 1942?

Mr. Simpson: Object, your Honor. I don't see how that has any relevancy to this issue here, as to how many drinks this witness had, and that is definitely beyond the scope of direct examination.

The Court: The number of drinks that this witness had is of no relevance, the number of drinks that he observed Mr. Rau take might well be relevant.

Mr. Gardner: I would also like to see just how many drinks the doctor had at the same time, so that I can compare his testimony as to whether or not he may or may [419] not have been under the influence of liquor, also.

Mr. Simpson: If your Honor please, this is a professional man, expert, called to testify with respect to a deceased, and counsel for Respondent is now inquiring into this man's drinking, as to how much he can drink in order to make a comparison.

(Testimony of John J. McCarthy.)

Certainly, it is not only irrelevant, incompetent, goes beyond the scope of direct examination. I can't see how it is admissible at all.

Mr. Gardner: I mean no insult to the doctor, your Honor. I merely want to determine just how he knows, how he knew that the deceased Mr. Rau was drunk.

The Court: I am satisfied as to the good faith of Government counsel, and I think it may have some relevance. This being cross-examination, I will permit him to continue.

Mr. Gardner: Thank you.

Q. (By Mr. Gardner): Now, you understand, doctor, I am not trying to probe into your private life at all. A. Yes.

Q. I am trying to find out the number of occasions that you did drink with Mr. Rau and how many drinks would you have with him, sir?

A. You asked that question and I answered I had a drink with him, but I probably wasn't there once or twice [420] all the time I knew him. Most of his drinking was done in the room.

Q. Did you observe him drinking in the room?

A. Yes, sir.

Q. What were you doing on those occasions?

A. Attending him professionally.

Q. You did not attend him professionally, I believe you stated prior to 1946?

A. That is right.

Q. Now, in 1942, I understood your testimony to be that you observed him at least under the influ-

(Testimony of John J. McCarthy.)

ence of liquor in '42, '3, '4 and '5; is that correct, sir? A. That is right.

Q. And I asked you whether or not you had occasion to go into the Southern Bar?

A. That is right.

Q. Did you, sir? A. Yes, sir.

Q. During 1942, '3, '4, and '5?

A. Yes, sir.

Q. Did you see Mr. Rau in the bar at any time, sir, during those— A. Yes.

Q. —years? A. Yes. [421]

Q. Did you have any drinks? A. No.

Q. You had no drinks with him? Would you speak to him, sir? A. Yes.

Q. Where would he be sitting?

A. I don't know as I ever saw him sit down. Oh, yes, I saw him sit in the lobby, but I never saw him sitting around the bar.

Q. What would he be doing in the bar, sir?

A. He just amble in and amble out.

Q. Amble in and amble out? A. Yes.

Q. Was he having any trouble walking at that time, sir? A. Yes.

Q. And how would he get along, with a cane?

A. Some, he used a cane, yes.

Q. He used a cane, he had trouble with his legs, didn't he, doctor? A. Yes.

Q. If he were sober, would you say he would have difficulty walking with this cane?

A. Yes.

Q. If he was under the influence of alcohol,

(Testimony of John J. McCarthy.)

would it [422] be possible for him to maneuver at all, doctor, during 1942, '3, '4, and '5?

A. Yes.

Q. You think he could maneuver, it would be extremely difficult, though, wouldn't it, doctor?

A. Well, he had what we call a shuffling gait, and I think, shuffling gait, I think that that probably wouldn't change much as to whether he was drinking or not.

Q. Is it your testimony, sir, that this man could be drunk and get along better than an ordinary person who didn't need a cane, could walk better than an ordinary person, sir?

A. No. I meant that he could, he would, his gait was such that you couldn't tell, perhaps, whether he has been drinking or from his natural shuffle.

Q. I see. So that many of the times that you saw him it could be the result of this natural shuffle that you assumed he had been drinking; is that correct, doctor?

A. Well, I knew him pretty well, I think; even a layman could tell that he had been drinking. Actually, in the room, I was where I saw most of the drinking.

Q. We are referring to the number of times you saw him shuffling into the bar in the years 1942, '3, '4, and '5, and I suppose he did this in 1946, too?

A. He got pretty, well, feeble that the—at that time [423] I did, he did some.

Q. You don't remember whether or not he had a wheelchair at that time, do you, doctor?

(Testimony of John J. McCarthy.)

A. I don't remember for sure.

Q. So, if he didn't have a wheelchair——

A. He must have had a wheelchair to get around, to get down, but I couldn't swear to that.

Q. You wouldn't swear to that in 1946, would you, doctor? A. No.

Q. So that at this time, in order for him to get around now, here is a man who has trouble with his legs; doesn't he, doctor? A. Yes, sir.

Q. And if he is inebriated or drunk, this man would have a great deal of difficulty walking, wouldn't he, doctor?

A. Well, with that gait, I believe it would be hard to tell a shuffling gait that is one that you are protecting yourself, anyhow.

Q. Well, could you tell me this, doctor: does intoxication, that is from drinking liquor, alcoholic beverages, does that affect the balance?

A. Yes, sir.

Q. It does, doesn't it, doctor?

A. Yes, sir. [424]

Q. Now, is it your testimony that the balance in Mr. Rau's mind is not affected as much as a person who was not affected with these diseases that he had?

A. Well, I would like to have you repeat that, please.

Q. Maybe I don't understand it, myself.

Will the Reporter read it, please?

(Question read.)

(Testimony of John J. McCarthy.)

The Witness: It is a little ambiguous, but I would state that the diseases wouldn't make him any less affected by alcohol; does that answer your question?

Q. (By Mr. Gardner): The disease would not make him any less affected, is that what you say, sir? A. That is right.

Q. Now, if he had difficulty keeping his balance when he is sober, he would have greater difficulty keeping his balance when he was intoxicated?

A. That is right.

Q. And it would be much greater than a person who was not ill or not sick; is that correct, sir?

A. Yes, sir, but may I interject something here?

Q. Surely.

A. You are talking about a drunk man all the time. I am talking about an alcoholic. [425]

Q. Well, very good, doctor. Would you explain the difference here?

A. Well, as far as we are concerned, the difference is a matter of acuteness. Acute being you might say, is one type of—is being drunk or you can be drunk all the time, but at least in an alcoholic state, and you don't have to be drunk all that time. If you are drinking, it affects the mind, we feel, along with these other conditions.

Q. Now, does it also affect the balance?

A. I believe it would over a long period of time.

Q. It would, wouldn't it, doctor? A. Yes.

Q. Certainly it would. And if a man was, had these infirmities that you specify, requiring him to

(Testimony of John J. McCarthy.)

use a wheelchair in 1947, if he drank at all, or became intoxicated, surely couldn't shuffle around, could he, doctor?

A. In '47 he couldn't shuffle around.

Q. But at least he was shuffling around in 1942, '3, '4, '5, and '6, wasn't he, doctor?

A. Yes; yes, sir.

The Court: Now, were the infirmities which required him to use a wheelchair infirmities that were related to alcoholism or were they other types of infirmities?

The Witness: Well, the alcoholism would have been one [426] of the causes. The arterio—

The Court: What do you regard as the principal cause?

The Witness: Well, the arteriosclerosis, whatever its cause might be, and alcohol is one that causes that. Senility is another cause, or any toxic poisoning and somebody who just developed arteriosclerosis by heredity.

Mr. Gardner: Might I clear that up?

Q. (By Mr. Gardner): I believe you testified, doctor, that in 1946 he had phlebitis; is that correct, sir? A. Yes, sir.

Q. Would you explain what that is, sir?

A. Phlebitis is an inflammation of veins. The word means, literally—but he gets clots in the veins, lower legs, those varicose veins, and they become infected.

Q. Actually this was the reason that Mr. Rau had difficulty walking, wasn't it A. Yes, sir.

(Testimony of John J. McCarthy.)

Q. That is what we are talking about?

A. Yes.

Q. That is the reason he had to use a cane?

A. At first, yes.

Q. And you treated him for that for the first time in 1946; is that correct, sir?

A. Yes. [427]

Q. So that he got along all right in 1946, on up into 1947 and sometime in 1947 started using a wheelchair; isn't that correct, doctor?

A. That is right. He may have in '46, but I am not sure.

Q. Now, he had this phlebitis, this trouble prior to '46, didn't he? A. Not to my knowledge.

Q. Did he walk with a cane prior to 1946?

A. He used a cane occasionally.

Q. He used a cane, the reason that he used a cane was because he had trouble with his leg, isn't that right, doctor?

A. I don't know: I wasn't his physician.

Q. When you examined him in 1946, could you tell me now whether or not this looked like a chronic condition, or was this something absolutely new?

A. The phlebitis was an acute flareup, but the arteriosclerosis, that was an old thing.

Q. That was the reason he walked around with a cane, wasn't it, doctor? A. Yes.

Q. That was shown by your examination, too, wasn't it? A. Yes, sir. [428]

Q. Now then, let me ask you this: doctor, did you have any financial transactions with Mr. Rau,

(Testimony of John J. McCarthy.)

other than for your fee? A. No, sir.

Q. Did you ever observe him in talking or discussing financial matters with others?

A. No, sir.

Q. When you would see him in the hotel, did you observe whether or not he would go around to the desk, or go around to the cash register, or anything like that?

A. I never noticed that he did. He just kind of seemed to be wandering around, looking around. I didn't see him taking any particular interest in the business.

Q. But he was there all the time, wasn't he, doctor? A. That I don't know.

The Court: Fix the time of your inquiry.

Mr. Gardner: Yes.

Q. (By Mr. Gardner): Referring specifically to the years 1942, 1943, 1944, 1945, 1946 and 1947, that is up to that time in 1947 that he moved out of the hotel, at the time——

A. At the time I took care of him in '46, late '46, I don't believe he ever got out of the hotel except going for a car ride or something like [429] that.

Q. He was right there in the hotel, wasn't he?

A. They would get him out to the car, some way, and take him for a car ride. He still had a wheelchair.

Q. It was in 1947, I believe you testified, doctor, that he had the cerebral accident; is that correct, sir? A. Yes.

(Testimony of John J. McCarthy.)

Q. Some sort of accident, a stroke?

A. Yes.

Q. Up until that time he maneuvered around, didn't he, doctor? A. Yes, sir.

Q. And he was on the scene, at least you can testify to that, can't you, doctor? A. Yes, sir.

Q. Now, you have stated that you had no financial transactions with him, haven't you, sir?

A. That is right; yes, sir.

Q. Did you have any discussions with him regarding your fee? A. No, sir.

Q. With whom did you discuss the fee, sir?

A. Usually in the hotel he just—"Pick up at the desk on your way out."

Q. He knew what he was doing, didn't he, doctor? A. He knew that much all right. [430]

Q. During the time that you had your office across the street, doctor, in '42, '43, '44, '45, did you ever observe Mr. Rau go to the bank?

A. No, sir.

Q. You never did. It wouldn't be your function, anyway, to sit there and look out the window.

A. No. In case I happened to be looking out—

Q. The only time you would see him was when you would go to the hotel?

A. I have seen him from the window in his earlier years, but just be in the doorway or something.

Q. You don't know where he was going?

A. No.

(Testimony of John J. McCarthy.)

Mr. Gardner: I believe I have no further questions.

Mr. Simpson: If your Honor please.

Redirect Examination

By Mr. Simpson:

Q. Doctor, you have been asked some questions with respect to the activity that you observed on the part of Mr. Rau in his hotel, the management, knew what was going, as counsel has stated.

Do you know Mr. Robert Webb?

A. I have met him, yes.

Q. Do you know what his position was with Mr. Rau?

A. I understood that he was clerk or he was, acted [431] as clerk.

Q. Did you see him at the hotel on the occasions that you came into the hotel? A. Yes.

Q. What was he doing?

A. I usually saw him behind the desk.

Q. Was he running the business, doctor?

A. It appeared that way, but I don't know. I didn't inquire to that.

Q. Do you know Miss Rose Goldstein?

A. Yes.

Q. Did you also see her there at the hotel?

A. Yes.

Q. Do you know in what capacity she was employed by Mr. Rau?

A. I don't—I didn't know that she was em-

(Testimony of John J. McCarthy.)

ployed at all. At the time she had a desk there and did some public stenographic work, as I understood. And that is about as well as I knew her. I didn't know her real well.

Q. But you saw her around the hotel on the occasions that you also saw Mr. Webb?

A. That is right.

Q. And was it your impression by watching Mr. Webb, particularly that he was the one that was operating this business that you saw at the [432] hotel?

Mr. Gardner: If the Court please, I believe this is not proper redirect examination. I didn't ask any questions about Mr. Webb or Miss Goldstein.

Mr. Simpson: You asked questions as to whether or not Mr. Rau was going around and looking at the business.

The Court: The question is, subject matter is appropriate enough, I think. But the witness has already been asked that by Mr. Simpson, and as I recall his answer, he said he couldn't swear to it, as to whether Mr. Webb was running the hotel.

You have rephrased the question. Now you have stated the same question in somewhat different words. I think in substance it is the same one that he previously said he couldn't answer.

Mr. Simpson: What I am trying to develop now is whether or not it was his understanding or impression, by watching Mr. Rau, as Mr. Gardner has developed from him, as to whether Mr. Rau was

(Testimony of John J. McCarthy.)

actually running the business, or it was someone else.

The Court: Perhaps I misheard the question. Will the Reporter please read it.

(Question read.)

The Court: I am confirmed in my recollection of the question that it relates to Mr. Webb, and my impression is that the witness had previously stated that he couldn't swear [433] to whether or not Mr. Webb was running the business. I regard this as repetitious in another form of the same question that the witness had previously said he could not answer.

However, I will let you put it to him and let the witness endeavor to answer it.

Mr. Simpson: Before we do that, your Honor, you may be correct in your recollection. I do not recall his answer to be that he couldn't swear that Mr. Webb was running the business.

The Court: That is my recollection of what he said. The record, the transcript will speak for itself here. Nevertheless, I will permit the witness to give his answer to the question at this time.

You may answer that, doctor.

Mr. Simpson: I will withdraw the question; I will not ask the question.

Q. (By Mr. Simpson): Doctor, on the occasions that you came to the hotel, did you see Mr. Webb there on each of those occasions?

A. Not always.

(Testimony of John J. McCarthy.)

Q. When you did see him, what was Mr. Webb doing? A. Almost always behind the desk.

Q. Did you see Mr. Webb at the bar?

A. I don't recall. [434]

Q. At the bar?

A. I don't recall it. I believe that there was a little room back of the desk—I am not too sure—that he used to be in there with some papers. That is as far as I could swear.

Q. The occasions that you were called to treat Mr. Rau, were you called by Mr. Rau or by someone else, do you know?

A. I was invariably called by someone else.

Q. By someone else. Now, the fee that you charged Mr. Rau was no more than you would charge for any other visit for anyone else?

A. No, sir.

Mr. Simpson: I have no further questions.

Mr. Gardner: I have no further questions, your Honor.

The Court: There will be a short recess.

(Short recess.)

Mr. Gardner: Call Miss Rose Goldstein, please.

ROSE GOLDSTEIN

called as a witness for and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name and address, please.

The Witness: My business name is Rose Goldstein; also known as Rose Longway, my married name. 210 Brink [435] Drive, Bakersfield, California.

Direct Examination

By Mr. Gardner:

Q. Miss Goldstein, are you married?

A. Yes, sir.

Q. What is your married name, please?

A. Rose Longway.

Q. Longway? A. Yes, sir.

Q. Do you go under the business name of Rose Goldstein, do you not? A. Yes, sir.

Q. For the purpose of this record, I will refer to you, with your permission, as Miss Goldstein; is that all right? A. Yes, sir, that is okay.

Q. Miss Goldstein, what is your present occupation?

A. Public stenographer, Notary Public, income tax service, telephone, mailer.

Q. And where is your office at the present time?

A. Well, since the last two years I have been doing some of my work at home, that I have been hurt. I had to give up my office.

Q. So now you maintain your office in your home; is that correct? [436] A. Yes, sir.

(Testimony of Rose Goldstein.)

Q. What is the nature of your infirmity, Miss Goldstein?

A. Well, I fell down an elevator and broke both my legs. That will be two years the 22nd of next month.

Q. Now, referring to the, a period prior to this, back in the early '30's, would you state whether or not you knew Walter F. Rau, Sr.?

A. I think I met him approximately about 1935. I am not——

Q. 1935? A. Yes, sir.

Q. What was the occasion of this meeting, Miss Goldstein?

A. Well, I would go in there to eat, you know, in the hotel there. I knew some people and then I went in there about—he wanted me to type the menus for the French Cafe.

Q. Well, how did you become engaged to type the menus for the French Cafe?

A. Fred Seal, one of the guests who was staying there was talking to Mr. Rau and he came and asked me to go see Mr. Rau and Mr. Rau called me and I made an appointment with him.

Q. This was as near as you could place it in the [437] year 1935; is that right?

A. Approximately; yes, sir.

Q. Would you state whether or not you subsequently moved your office to the lobby of the Southern Hotel? A. I did later on.

Q. How much later on? A. Well——

Q. 1935, 1936, about two months later?

(Testimony of Rose Goldstein.)

A. Well, from two months to six months later.

Q. You moved your offices and this was in 1935 then?

A. Well, approximately that time.

Q. Approximately. What sort of accommodations did you have in the Southern Hotel, Miss Goldstein?

A. Mr. Rau, Walter F. Rau, Sr., says I could have my desk space there for typing the menus and one meal a day.

Q. And where was your desk space?

A. It was in the hotel lobby.

Q. In the hotel lobby?

A. 1907 Chester Avenue.

Q. Did you subsequently do any other work for Mr. Rau?

A. Well, one time Mr. Webb came to me and asked if I knew of a bookkeeper. I said, well, what about myself, [438] and then Mr. Webb came back, I don't know whether that same day or the next, and he said Mr. Rau said you could take care of it.

I asked him how much he would pay me. He said \$10 a month.

Q. \$10 a month? A. Yes, sir.

Q. Just what businesses or business did you keep the records for; were you employed to keep the records for?

A. The Southern Hotel, and when they opened up the French Cafe, and then after prohibition, the Southern Wine and Liquor.

Q. In other words, I believe you stated that you

(Testimony of Rose Goldstein.)

were employed in 1935; could it be that you were employed prior to 1935?

A. Well, I can't recall.

Q. In any event, you do know that you took care of the records of the Southern Wine and Liquor and the French Cafe, and the Southern Hotel?

A. Yes, sir, and others for Mr. Rau.

Q. And others for Mr. Rau? A. Yes, sir.

Q. But relating to those three?

A. Yes. [439]

Q. That is once again the Southern Hotel, the French Cafe, and the Southern Wine and Liquor?

A. Yes, sir.

Q. Would you state whether or not you were keeping those records in 1935?

A. Well, approximate to my, to the best of my knowledge.

Q. Were you keeping them in 1936?

A. Up until the time the hotel was demolished.

Q. You kept them all through those years?

A. But not for the French Cafe after June 6, when they went into partnership. I didn't take care of that.

Q. June 6 of 1946?

A. To when Mr. Bender and Mr. Rau went into partnership.

Q. I see. That was in 1946? A. Yes, sir.

Q. I see. Now, did you also prepare the income tax returns for Mr. Rau? A. I did.

Q. Did you prepare the income tax returns for the years 1942 to 1946? A. Yes, sir.

(Testimony of Rose Goldstein.)

Q. I show you Exhibit 2D, the income tax return of Walter F. Rau, Sr., and Mary Agnes Rau, for the year 1942, [440] and ask whether or not you prepared that income tax return or those income tax returns? A. Yes, sir.

Q. I show you the income tax return for the year 1943 for Walter F. Rau, Sr., Exhibit 3E, and ask whether or not that is your signature on the bottom of the face of the return?

A. That is——

Q. Did you prepare that return?

A. Yes, sir.

Mr. Simpson: If your Honor please, I stipulate that she prepared the returns for all the years he has. It won't be necessary to go through all that.

Mr. Gardner: Very well. It is stipulated that Miss Goldstein, Rose Goldstein prepared the income tax returns of Walter F. Rau, Sr., for the years 1942, 1943, 1944, 1945, and 1946, and that she also prepared these separate income tax return of Mary Agnes Rau, for the year 1942.

Mr. Simpson: Stipulated.

Q. (By Mr. Gardner): Now, Miss Goldstein, in preparing the income tax returns for each of these years as indicated, what books and records did you use to prepare the returns?

A. You mean where I got the information?

Q. Yes. [441]

A. Or—well, I would get it from the check book when I would write in my cash journal, and then

(Testimony of Rose Goldstein.)

for the cash sheets of the Southern Hotel showing the room rents.

Mr. Simpson: Sorry, your Honor, I didn't hear the second. She used the check books and what was the second?

The Court: The Reporter will read it to you.

(Record read.)

The Witness: And other incomes.

Q. (By Mr. Gardner): Other what?

A. Other incomes.

Q. Mr. Rau had more business in these years than just the Southern Hotel, the Southern Wine and Liquor, and the French Cafe, did he not?

A. Yes, sir.

Q. Now, I am going to direct my questioning to the French Cafe, and I hand you what has been marked as Respondent's Exhibit R, which states it is a year book for the year 1942, and ask if you know what that book is?

A. Well, these would be the amounts that would be taken off of those cash sheets.

Mr. Simpson: Objection, your Honor. I don't think there is any foundation laid that this witness can testify that she made those entries in those books, or what they constitute; asking for a conclusion of what is in that record. [442]

The Court: Will you rephrase your question, Mr. Gardner?

Mr. Gardner: I asked my question I believe, if the Court please, was whether or not she could identify this book, if she knew what it was, your Honor.

(Testimony of Rose Goldstein.)

The Witness: Yes, sir.

Q. (By Mr. Gardner): Would you state what that book is, Miss Goldstein?

A. That is where I would get my records for the receipts of the French Cafe.

Mr. Simpson: It is not responsive to the question.

Mr. Gardner: I think it is, your Honor. This is the book where she would get the records of the receipts. Now, we will trace that from her to her other records.

The Court: The answer will stand.

Q. (By Mr. Gardner): Now, for the year 1942, you were referring to Respondent's Exhibit R; is that correct? A. Yes, sir.

Q. Now, the year 1943, Exhibit O, would you examine that book and state if you know what it is?

A. The same as—get my receipts for the French Cafe.

Q. Would you also get your receipts for the Southern Bar out of that, too, Miss Goldstein?

A. Yes, sir. [443]

Q. Thank you.

The Court: Would that be true also for the other book, 19—

The Witness: Yes, sir.

The Court: 1942?

The Witness: Yes, sir.

Mr. Simpson: I will stipulate that the same procedure followed throughout the rest of the years.

(Testimony of Rose Goldstein.)

Q. (By Mr. Gardner): Did you follow the same procedure throughout the years 1944, '45 and 1946? A. Yes, sir.

Q. Of getting the receipts for the French Cafe from these year books set up as Exhibit N, Exhibit P, Exhibit Q, and Exhibit S? A. Yes, sir.

Q. Now, Miss Goldstein, there is just one other thing—

Your Honor, at this point, the year book for the year 1944 shows in gold "Year book 1938," and the dates throughout this book show 1938, printed dates. Counsel has stipulated that this book, Exhibit N, relates to the year 1944 and shows the daily receipts of the French Cafe and Southern Bar for that year

Mr. Simpson: So stipulated. [444]

Q. (By Mr. Gardner): Now, Miss Goldstein, you have stated that these year books contained the receipts from the business known as the French Cafe, and the Southern Wine and Liquor; is that correct? A. To my knowledge.

Q. At least, these are the receipts that you used and recorded; is that correct? A. Yes, sir.

Q. I will show you Exhibit M, referring now to S-8 of Exhibit M, dated September 25, 1943, and ask whether or not you recognize that sheet?

A. Yes, sir.

Q. What is that sheet, Miss Goldstein?

A. That is the daily cash sheet from the French Cafe and all cash purchases made.

(Testimony of Rose Goldstein.)

Q. Now, does that show on there, Miss Goldstein, the purchases relating to the French Cafe?

A. Yes, sir.

Q. Where would that be shown there, Miss Goldstein?

A. Well, it would be on the left hand, it would be the purchase and miscellaneous on the right, both together, would be the full amount of the cash paid out during that day.

Q. Now, is there a total shown as cash paid out on [445] sheet for September 25, S-8 of Exhibit M?

A. Yes, sir.

Q. What is the total paid out? A. \$153.58.

Q. Did you use that figure in computing the purchases of the French Cafe for the entire year; would that figure be included?

A. You mean the purchase by check?

Q. The purchases for the French Cafe?

A. Well, we had both check purchases and cash purchases.

Q. I see. And—— A. Yes, sir.

Q. Where would you get your cash purchases?

A. From these daily sheets.

Q. From these daily sheets? A. Yes, sir.

Q. What was your practice, Miss Goldstein, would you record each day's purchase in your other book? A. No, sir, I would do it monthly.

Q. You would do it monthly? A. Yes, sir.

Q. Then you would go through these daily slips and total the cash purchases; is that right, sir?

A. Yes, sir; yes, sir. [446]

(Testimony of Rose Goldstein.)

Q. Did you do that in each of the years involved, Mrs. Goldstein? A. Yes, sir.

Q. 1942, 1943, 1944, 1945, and up to May 6, 1946?

A. June 6, 1946.

Q. June 6? A. Yes, sir.

Q. All right.

The Court: That is for the French Cafe?

The Witness: Yes, sir.

Q. (By Mr. Gardner): Referring to the year 1944, Miss Goldstein, Exhibit 4F, the income tax return of Walter F. Rau, Sr., for that year, turning to a schedule contained in that income tax return, and exhibit headed the French Cafe, year 1944, would you state the amount shown therein as purchases? A. Yes, sir.

Q. What is the amount, please?

A. Purchases is \$55,944.92.

Q. Could I have that last answer, please?

A. \$55,944.92.

Q. That is the amount shown in the income tax return for the year 1944, Walter F. Rau, Exhibit 4F? A. Yes, sir.

Q. Under the French Cafe, shown as purchases? [447] A. Yes, sir.

Q. Do you know whether or not that figure is correct, Mrs. Goldstein?

A. Well, I can't say right now, offhand.

Q. Well, Miss Goldstein, did I ask you to examine this figure and also to examine the records of the French Cafe, showing purchases to determine

(Testimony of Rose Goldstein.)

whether or not the figure shown there under purchases is correct; did I ask you to do that?

A. No, sir. They are incorrect.

Q. It is incorrect? A. Yes, sir.

Q. Now, you can—did you examine your work, or your books relating to the French Cafe, purchases, that is this—

Mr. Simpson: If your Honor please—

Q. (By Mr. Gardner): The book right here in the courtroom, did you examine that and compare the purchases shown in that book with the purchase figure shown on Exhibit 4F; did you do that?

Mr. Simpson: I don't understand what counsel means by that book. When we get the record it is not going to be clear to me, as to what this witness examined in connection with this return, in picking a figure out of that return and [448] saying that book, and then asking for a conclusion.

The Court: Government counsel will identify the book.

Q. (By Mr. Gardner): The book referred to in the question relates to the—

A. Cancelled checks.

Mr. Gardner: Records maintained for the French Cafe for the period January 1, 1941, to June of 1946; it shows therein—

Mr. Simpson: May I ask if counsel is testifying with respect to this record.

Mr. Gardner: I am identifying a book, if the Court please.

Mr. Simpson: I submit, sir, that he lay the

(Testimony of Rose Goldstein.)

proper foundation for the purpose of identifying this record that he is talking about.

Mr. Gardner: Very well, your Honor.

The Court: Will you have the clerk stamp it.

Mr. Gardner: Yes, I will.

The Clerk: Respondent's Exhibit U marked for identification.

(The document above referred to was marked Respondent's Exhibit U for identification.) [449]

Q. (By Mr. Gardner): Miss Goldstein, I hand you what has been marked Exhibit U for identification and ask whether or not you can identify this book? A. Yes, sir.

Q. Has that book—what is that book?

A. That is my cash journal where I kept my records of Southern Hotel, French Cafe, and Southern Wine and Liquor.

Q. For what years?

A. From 1943, I think, or 1941, up until 1946, June 6, 1946.

Q. Now, you are speaking of the French Cafe when you say up to June 6 of 1946, aren't you?

A. Yes, sir.

Q. Now, did I ask you, Miss Goldstein, to examine the purchases shown in Exhibit U, for the year 1944, and compare the total per books with the total on the income tax return, Exhibit 4F?

A. Well, this was all monthly, so I didn't have the total year.

(Testimony of Rose Goldstein.)

Q. Yes.

A. And, whether I have it in that ledger, I don't know, but I would have to take each month, take a register tape, register receipt and get my amount.

Q. Well, do you recall whether or not you did that, [450] Miss Goldstein?

A. Yes, sir. That is the way I had to get it, in order to get my amount of purchases for the year.

Q. Yes, and did you do that just recently for me, did you compute that? A. Yes, sir.

Q. And did you compare the amount?

A. Yes, sir.

Q. Per books with the amount on that?

A. Yes, sir.

Q. Would you state now whether or not purchases shown in Exhibit 4F, under the French Cafe, in the amount of \$5,594—wait a minute—\$55,944.92 is correct, or coincides with the amount in the books? A. No, sir.

Q. What is the difference, Miss Goldstein?

A. Well, it would be approximately about \$10,000 that I would have to add on.

Mr. Simpson: If your Honor please, now counsel has asked her if she has made the comparison. It was not correct, she stated a conclusion. Now, she says approximately. I think that we are entitled to the exact amount of difference.

Mr. Gardner: May I develop that. I think I can get the exact amount here.

The Court: Proceed. [451]

(Testimony of Rose Goldstein.)

Q. (By Mr. Gardner): Does the figure shown as purchases, does that contain an erasure on Exhibit 4F for the French Cafe? A. Yes.

Q. And what was the figure originally put in there, if you can see it?

A. You mean before?

Q. Yes. A. \$45,000.

Q. \$45,000? A. Yes, sir.

Q. And you increased that by ten?

The Court: Was it \$45,000 even?

The Witness: Yes, sir.

Mr. Gardner: No.

Mr. Simpson: Mr. Gardner, I would suggest that you let the witness testify, sir.

Mr. Gardner: I am merely trying to keep the record straight.

The Court: What was the amount before the erasure?

The Witness: \$45,944.92.

Mr. Simpson: Well, if the Court please, this is very confusing to me. There is an erasure, this witness testifies that there was a four in place of the five, and from what I can see, I can see no other figure than a five on this [452] exhibit.

The Court: That is subject for cross-examination.

Mr. Gardner: If the Court please, the books are here in evidence, and Mr. Simpson wants to save time, he can run these purchases as they are shown on the records, and come up with the figures which the witness is testifying to, I believe.

(Testimony of Rose Goldstein.)

The Court: That is another matter, Mr. Gardner. The question that is presently pending, or that the witness was answering, had to do with the specific figures that appeared upon Exhibit 4F.

Mr. Gardner: Yes.

The Court: What there was before the erasure and what after?

Q. (By Mr. Gardner): Did you make the erasure on there, Miss Goldstein?

A. Well, I put the amount over that; whether I erased it or not, I can't recall.

Q. Is that your figure, the five, relating to Exhibit 4F, French Cafe purchases? A. Yes.

Q. That is your figure? A. Yes, sir.

Q. Could you state whether or not you had any conversations with Mr. Rau regarding the insertion of the [453] figure five, as you have just stated?

A. Well, the way I would have to bring—how I came to that—

Q. Did you have any conversations with Mr. Rau? A. Yes, sir; yes, sir.

Q. Could you state what was said?

A. When I had the figure prepared to put in the income tax blank, I showed them to Mr. Rau, and I told him that he had a tax to pay. He said, "Raise the purchases," because even if you had a small tax to pay, than to pay the amount—and I told him, "Mr. Rau, leave it the way it is." He instructed me to raise the purchases.

Q. Did you raise the purchases?

(Testimony of Rose Goldstein.)

A. I did, on his orders.

The Court: You raised it from what to what?

The Witness: From \$45,944.92 to \$55,944.92.

The Court: Now, did the purchases as shown in Exhibit U for that year add up to exactly \$45,944.92?

The Witness: Yes, sir.

The Court: I presume that Counsel for Petitioner will have an opportunity to check these figures in Exhibit U?

Mr. Simpson: Yes. I thought, in the interest of time, if Counsel had no use for this January cash journal, we could be adding these figures.

The Court: This is a good time to recess for the [454] afternoon and I will give you an opportunity to do it right now.

We will reconvene tomorrow morning at 10:00 o'clock.

(Whereupon, at 4:00 o'clock p.m. the hearing in the above-entitled matter was adjourned until 10:00 o'clock a.m., July 2, 1958.) [455]

The Clerk: Estate of Walter F. Rau, 61480.

Mr. Gardner: Should we state our appearances for the record, or just continue?

I call Miss Rose Goldstein.

ROSE GOLDSTEIN

resumed the stand, having been previously duly sworn, was examined and testified further as follows:

Direct Examination
(Continued)

By Mr. Gardner:

Q. Now, Miss Goldstein, I believe you were in the courtroom when Mr. Webb was testifying, and he testified regarding certain checks that he would make out to cash and label in the check stub "supplies." This relates to the French Cafe for the years 1942, 1943, 1945 and up to May 6 of 1946.

Do you recall that testimony?

A. Yes, sir.

The Court: You skipped 1944, Mr. Gardner.

Mr. Gardner: I intended to include that.

The Court: Did you intend to include that?

Mr. Gardner: Yes, I did, and 1944.

The Witness: Yes, sir.

Mr. Simpson: If your Honor please, if Counsel intends to use the French Cafe daily sheets on which are [458] reflected the cash pay outs, I will be willing to stipulate that, to save him the trouble of going through each year with this witness.

Mr. Gardner: As I understand it, Counsel is willing to stipulate that the amounts reflected in the check stubs for the French Cafe for the years 1942 up to May 6 of 1946 shown as cash and for supplies, are represented on these Exhibits 20, 22, 23, and 24, that should be amended to state as follows: That the amounts about to be shown to Miss

(Testimony of Rose Goldstein.)

Goldstein in the—and the check stubs of French Cafe for years 1942 up to May 6, 1946——

The Court: May or June?

Mr. Gardner: It is May 6, your Honor, I believe, according to stipulation.

Are reflected in Exhibits 20, 22 and 23.

The Court: I don't understand that stipulation.

Mr. Gardner: Well, I would prefer to go through it, your Honor.

The Court: Suppose you go through at least one of the items, then we can see where we stand on it.

Mr. Gardner: Very well.

The Court: The stipulation as it has been formulated up to this point is not very meaningful to me.

Q. (By Mr. Gardner): Miss Goldstein, referring to Exhibit 20, going [459] to the date of December 22, 1943, at the bottom of the page is a summary apparently of that sheet.

Would you state what that sheet is, please?

A. That is the daily cash sheet from the French Cafe.

Q. From the French Cafe? A. Yes, sir.

Q. And these figures at the bottom, Miss Goldstein, could you tell us what this summary consists of?

A. Well, the first figure is registered reading, and then where there would be some meal tickets, which was added, less that, because meal tickets were rung up in the full total.

Q. I see.

(Testimony of Rose Goldstein.)

A. And then the payouts would be deducted from that, which would leave a balance of \$298.69.

Then the \$10, that was taken out for Mr. Rau, which would leave a balance of \$288.69. This check for \$31.45 is to represent cash supplies.

Q. Cash supplies?

A. Which was added to the deposit to make it over the \$300.

The Court: Did they represent actual cash supplies or did that figure represent merely a check that was drawn to cash purportedly for [460] supplies?

The Witness: There was no supplies bought for that amount, your Honor.

Q. (By Mr. Gardner): Now, referring to Exhibit T, under date of December 23, 1943, check stub No. 3269, this check stub shows a check being made to cash in the amount of \$31.45, and in the remarks column it shows supplies?

A. Yes, sir.

Q. Now, did you record this amount, \$31.45, as supplies for the French Cafe in the year 1943, Miss Goldstein?

A. I did, in my cash journal, and put it under purchases.

Q. You put it under purchases?

A. Yes, sir.

Q. And you knew at that time that there were no supplies actually purchased, didn't you, Mrs. Goldstein?

A. According to that, no, because I asked once

(Testimony of Rose Goldstein.)

what that amount was for, and I was instructed that it was to put it under purchases.

Q. Who did you ask, Miss Goldstein?

A. Well, I asked Mr. Webb, and then when Mr. Webb wasn't there, I also asked, well, Mr. Rau was there at the time, also.

Q. Did you ask more than once?

A. Well, when there was no indication what it was [461] I had to ask what it was for.

Q. But this shows supplies on the stub, doesn't it?

A. Yes, sir.

Q. Is that where you got your information?

A. Yes, sir.

The Court: Did you similarly record under purchases the items appearing in all similar check stubs of the check book of the French Cafe for all the years involved?

The Witness: Your Honor, I did it at first, and then Mr. Rau told me to wait at the end of the month and add up the cash supplies, plus that amount and put it under one check and cash.

The Court: In one form or another, every one of these items was included on the books as purchases?

The Witness: Yes, sir.

Q. (By Mr. Gardner): Did that apply to each of the years 1942, 1943, 1944, 1945, and up to May 6, 1946?

A. Yes, sir.

The Court: And upon whose instructions did you make those entries?

The Witness: By Walter F. Rau, Sr., and Robert Webb.

The Court: Both of them?

(Testimony of Rose Goldstein.)

The Witness: Yes, sir.

Mr. Gardner: If the Court please—— [462]

The Court: And when you came to make out the income tax returns, were those amounts similarly reflected in the computation of the income?

The Witness: Yes, sir.

The Court: Of each of those years?

The Witness: Yes, your Honor.

Mr. Gardner: If the Court please, I would like to introduce check stubs for the years, portion of each of the years in support of Miss Goldstein's testimony.

Mr. Simpson: If your Honor please, it won't be necessary, I think that we have now probably arrived at a basis for the stipulation, if your Honor pleases, now understands the nature of what was testified to, with one exception, that is that Miss Goldstein also testify that those amounts also appearing as supplies on the check stubs also appear on the daily sheets of the French Cafe, and are recorded as additional income and not just money deposited in a bank, as she stated, then we will have the basis for the stipulation; won't be necessary to go any further with it.

Mr. Gardner: If the Court please, I believe that Mr. Webb made that clear, that he did add that to the receipts.

Mr. Simpson: Yes. Well, if she stipulates differently, that is one thing, but I thought the record [463] ought to be consistent; save a great deal of time doing it that way.

(Testimony of Rose Goldstein.)

The Court: I am perfectly happy to receive a stipulation of Counsel. My difficulty with this proposed stipulation a few minutes earlier was that in the endeavor to formulate it, on the spur of the moment, the stipulation, the proposed stipulation that emerged was not a meaningful or a very clear one.

I want to make another effort at it. I would be perfectly happy to have you do so.

Mr. Gardner: I would hesitate to try on the spur of the moment, your Honor.

The Court: Let me ask the witness this:

You heard Mr. Webb testify, I take it, Miss Goldstein?

The Witness: Yes, your Honor.

The Court: And as I recall his testimony, these checks that were made out to cash, and which were identified in the, on the check stubs as having been made out for supplies——

The Witness: Yes, sir.

The Court: ——were added to the receipts of each day.

The Witness: Not to the receipts. The balance of the receipts, after the cash supplies were first taken off, and plus the \$10 taken off, and then that check was added. [464]

The Court: But the net effect of that, of such a check, was to increase the receipts by the amount of that check?

The Witness: Yes, sir.

The Court: So that when you subsequently re-

(Testimony of Rose Goldstein.)

corded these checks on the books, as amounts expended for purchases or supplies——

The Witness: Yes, sir.

The Court: ——the net effect was simply to neutralize the inclusion of the amounts of those checks on the daily sheets?

The Witness: Yes, sir.

The Court: On the one hand the daily income was increased by the amount of those checks, but on the other hand, by your including them in purchases, the purchases simply washed out the increased amount of the daily receipts?

The Witness: Yes, your Honor.

Mr. Gardner: And that——

The Court: I think I understand it.

Mr. Simpson: Yes. Your Honor, you have a clear understanding that is exactly what transpired, and I could see that if Mr. Gardner was to pursue the same thing that we covered with Mr. Webb, it would be a complete repetition of what he already testified to, the net effect of which would be a standoff. It would be neutralized because of [465] the way it was handled in the books and in the return.

I am perfectly willing to stipulate she will testify this way, and dispense further questioning along those lines. Now, that is clear to your Honor?

Mr. Gardner: I want the record to show that——

Mr. Simpson: It should show that——

Mr. Gardner: ——exactly what she testified to——

(Testimony of Rose Goldstein.)

The Court: I think I understand it, and I think there is no dispute between Counsel as to this point.

Nevertheless, I will permit Mr. Gardner to make it clear beyond any residual doubt, if he wishes.

Mr. Gardner: I don't desire to prolong this thing, if the Court please.

The Court: You may go ahead.

Q. (By Mr. Gardner): I believe that you testified, Miss Goldstein, that in some cases you recorded the exact amount in your records; is that correct? A. Yes, sir.

Q. That is the exact amount of the check stub showing a check to cash for supplies?

A. Yes, sir.

Q. As testified to by Mr. Webb. Now, would you examine check stub No. 3394 a part of Exhibit T, dated January 6, 1944, and state the amount shown therein? [466]

A. The amount stated here is \$62.30.

Q. Referring to Exhibit U, for identification, Miss Goldstein, would you look on there and see whether or not you can find the check to supplies in the amount of \$62.30 under date of January 6, 1944, recorded? A. Yes, sir.

Q. Recorded in your records?

A. Yes, sir.

Q. And what is the record that you have there, Miss Goldstein?

A. I have the cash supplies, check number under my bank, \$62.30, brought over under purchases, \$62.30.

(Testimony of Rose Goldstein.)

Q. And that relates to the date of what?

A. January 6, 1944.

Q. What page number—we do not have pages here, your Honor.

A. Well, it is cash journal 1.

Q. Cash journal 1 of the French Cafe; is that correct? A. Yes, sir.

Q. Of Exhibit U; is that correct?

A. Yes, sir.

Q. Now, as I understand it, in other months you lumped or added up these checks payable to cash for supplies; is that correct? [467]

A. Yes, sir.

Q. And then you included them in purchases in these very same records, Exhibit U?

A. Yes, sir.

Q. And these very same records, Exhibit U, are the records that you used to prepare the income tax returns, are they? A. Yes, sir.

Q. That applies to each of the years 1942, '43, 1944, 1945, and 1946; is that correct?

A. Yes, sir.

Q. Now, in each of those years purchases was overstated in a like amount as shown on these cash supplies; is that correct? A. Yes, sir.

Q. Now, there is one further point relating to purchases, Miss Goldstein. I hand you Exhibit 3E, the individual income tax return of Walter F. Rau for the year 1943, and turning to the schedule therein marked French Cafe, it has a gross sales, it has inventory, and it has purchases.

(Testimony of Rose Goldstein.)

Now, during that year, it says purchases made during the year, \$66,791.12. Do you see that figure, Miss Goldstein? A. I do.

Q. At my request, did you examine your records and [468] total the purchases according to your records, that is Exhibit U, for identification, to determine the total amount of purchases in your records? A. Yes, sir.

Q. And according to those records, what was the total amount of purchases that you had in Exhibit U, for 1943?

A. For 1943, the French Cafe total of purchases taken from my cash journal, from January 1, 1943, up to and including December 31, 1943, was \$48,503.91.

Q. Now, would you read once again the total that you have on the income tax return, please?

A. \$66,791.12.

Q. And purchases are considerably overstated then in the income tax return, are they not, Miss Goldstein? A. Yes, sir.

Q. Do you know why this was done?

A. Yes, sir.

Q. Would you state the circumstances surrounding the insertion of \$66,000 some odd dollars as purchases on the income tax return Exhibit 3E?

A. When I had the income tax figures made up, I took them over to Mr. Rau, to have him check them, showed what tax he had to pay. He told me to boost the purchases so he wouldn't have much

(Testimony of Rose Goldstein.)

income tax to pay, or none, and I [469] did it according to his instructions.

The Court: Now, you testified that the purchases shown on the books were \$48,503.91?

The Witness: Yes, sir.

The Court: Now, did that figure include the amounts that appeared on the check stubs with respect to checks made out to cash for supplies, where the supplies were not in fact purchased?

The Witness: Yes, your Honor.

The Court: So that even the \$48,503.91 figure was an inflated figure?

The Witness: You mean were those extra checks?

The Court: Yes.

The Witness: Yes, sir.

The Court: But to the extent of that, that it was inflated in the \$48,503.91, that inflation was offset by the similar or rather a corresponding artificial increase in the amount of receipts?

The Witness: Yes, your Honor.

The Court: But the increase, however, from \$48,503.91 to \$66,791.12 was not offset by any corresponding——

The Witness: No, sir.

The Court: ——corresponding increase in receipts?

The Witness: No, your Honor. Do you want this, your Honor? [470]

Q. (By Mr. Gardner): Now, Miss Goldstein, you heard the testimony of Mr. Webb to the effect

(Testimony of Rose Goldstein.)

that he prepared these daily slips for the French Cafe in each of the years 1942, on up to May 6, 1946, did you not? A. Yes, sir.

Q. And he stated that when he was absent, or when he went on away for a couple days, or he was sick, that you took over for him; is that correct, Miss Goldstein? A. Yes, sir.

Q. And did you carry on, that is, did you make out the daily slips as Mr. Webb testified he made out the daily slips?

A. Just about, in part.

Q. Just about, in part? A. Yes, sir.

Q. In order to refresh your recollection, I will hand you once again Exhibit 20, and we will go to the first one on that exhibit under date of September 20, would you tell me what that ten represents in the summary on the right side of the sheet?

A. That was \$10 that was taken out for Mr. Walter F. Rau, Sr.

Q. Now, during the times that Mr. Webb was absent, just exactly what did you do; did you receive the receipts [471] from the French Cafe?

A. I did.

Q. Did you receive the receipts from the Southern Wine and Liquor store? A. I did.

Q. Now, when you received the receipts from the French Cafe, would you state just exactly what you did, Miss Goldstein?

A. I did according to what Mr. Webb instructed me to. I put the total receipts, less the payouts,

(Testimony of Rose Goldstein.)

less the amount \$10, to Mr. Rau, and added that cash supply check.

Q. Now, what about the Southern Wine and Liquor? A. Did the same thing.

Q. You did the same?

A. Although there wasn't many cash payouts there.

Q. What did you do with the money?

The Court: What was the amount that was taken off for the bar, or the Southern Wine and Liquor Company?

A. Every day of the week was \$25.

Q. (By Mr. Gardner): Did you ever have occasion to take off any more than \$25, Mrs. Goldstein?

A. Oh, Mr. Rau's orders on Saturdays, Sundays or holidays.

Q. How much would you take off then? [472]

A. You mean from the cafe, or the bar, which?

Q. Well, let's talk about the French Cafe, first.

A. Well, on the French Cafe on Saturdays, Sundays and holidays, he would take off from \$100 to \$125, or \$150.

Q. Now, did that apply for the years 1942 to May 6 of 1946?

A. Yes, sir, your Honor; yes, sir.

Q. In each of those years; is that correct, Mrs. Goldstein? A. Yes.

Q. You did this personally on occasion?

A. Well, I did it in Mr. Rau's presence, when Mr. Webb wasn't there.

(Testimony of Rose Goldstein.)

Q. Now, going to the Southern Wine and Liquor Store, how much would take off of the Southern Wine and Liquor Store during the week?

A. \$25 a day, Saturdays and Sundays and holidays, Mr. Rau would tell me the amount to take off.

Q. Did you do this during each of the years 1942 to 1947, inclusive? A. Yes, sir.

Q. Up until the time that the Southern Hotel was torn down in August 7 of 1947; is that correct? A. Yes, sir. [473]

Q. In each of those years, you took off money, \$25 during the week and \$100 or more as instructed by Mr. Rau from the Southern Wine and Liquor Store?

A. No, not from the Southern Wine and Liquor.

Q. How much did you take off?

A. Well, he would instruct from 125 up to 200.

Q. From 125 to 100?

A. 2599, and a little bit more.

Q. That would include Saturdays, Sundays and holidays? A. Yes.

Q. And \$25 every day? A. Yes, sir.

Q. From the Southern Wine and Liquor?

A. Yes, sir.

Q. Now, as to the French Cafe, you took off \$10 every day and \$100 up to \$125 or \$150 on Saturdays, Sundays and holidays? A. Yes, sir.

Q. And that extended throughout the period 1942 to May 6 of 1946, as to the French Cafe; is that correct? A. Yes, sir.

Q. In each of those years you did that?

(Testimony of Rose Goldstein.)

A. Well——

The Court: On week ends, or days on which more than [474] \$10 was taken out for the cafe and more than \$25 was taken out for the Southern Wine and Liquor Company, with two amounts taken out for each one of those, that is to say, take the French Cafe, let's assume it was a Saturday——

The Witness: Yes, sir.

The Court: Were two amounts taken out for that Saturday, was \$10 taken out separately and then another amount taken out over and above the \$10, or was it taken out in one lump sum?

The Witness: One lump sum, to the best of my recollection.

Q. (By Mr. Gardner): Now, as you take out the \$10 daily from the French Cafe, what did you do with that \$10, Miss Goldstein?

A. There was a little slip in Mr. Rau's key box and on that slip, which Mr. Rau was present, I would put the date down and the amount of \$10 and put it back in that cubby hole for, where his key was kept.

Q. And relating to the \$25 daily that you would take out of the receipts of the Southern Wine and Liquor Store, what did you do?

A. The same thing; the same thing.

Q. Now, as to the amounts on week ends, relating to the French Cafe, that is the amounts of \$100 to \$125, what would you do with that [475] money?

A. That I would put in an envelope until Mr.

(Testimony of Rose Goldstein.)

Webb would come back on Monday morning, and I would give, hand him all the records.

Q. In other words, you were just keeping these records for Mr. Webb, weren't you?

A. Yes, sir.

Q. You would give it to him?

A. Yes, sir.

Q. And then he would make proper disposition?

A. Yes, sir.

Q. Now, as to the amounts that you removed from the receipts of the Southern Wine and Liquor Store, on Saturdays, Sundays and holidays, that is, the larger amounts, \$125 up to \$200, I believe you testified, what did you do with that money?

A. Same procedure was done on the Southern Wine and Liquor, as I did on the French Cafe.

Q. Now, Mrs. Goldstein, you kept the books and records for the French Cafe and for the Southern Wine and Liquor during the years 1942 on up through 1947; didn't you?

A. Yes, sir.

Q. Can you state whether or not your records were correctly kept as to the receipts of the French Cafe and the Southern Wine and Liquor Store?

A. The only record I got for the receipts of the [476] French Cafe and Southern Wine and Liquor was from those daily books where Mr. Rau put the deposits and those deposits was transferred into my books as receipts.

Q. Now, that applies to each of the years 1942 to 1947, doesn't it, Miss Goldstein?

A. Yes, sir.

(Testimony of Rose Goldstein.)

Q. That relates to the receipts of the Southern Wine and Liquor Store and the French Cafe?

A. Yes, sir.

Q. For each of those years? A. Yes, sir.

Q. You are referring to these daily year books, are you not? A. Yes, sir.

Q. That is Exhibits R, O——

The Court: She was nodding in the affirmative.

The Witness: Yes.

Q. (By Mr. Gardner): ——N?

A. Yes, sir.

The Court: Did I get your answer to Exhibit R?

The Witness: Yes.

Q. (By Mr. Gardner): Yes. Exhibit O?

A. Yes. [477]

Q. Exhibit P? A. Yes.

Q. Exhibit Q? A. Yes.

Q. And Exhibit S? A. Yes, yes.

Q. Now, you knew that those receipts were understated then, didn't you, Miss Goldstein?

A. Yes, sir.

Q. Did you have any discussions with Mr. Rau regarding the understatement of the receipts from the French Cafe and the Southern Wine and Liquor Store? A. I did.

Q. Would you state when the first discussion you had with Mr. Rau took place?

A. Well, when I was taking Mr. Webb's place at the time, either on week ends or when he was sick, or on his vacation. I told Mr. Rau that the right receipts should have been kept in those year

(Testimony of Rose Goldstein.)

books, not the deposits, and he says I should go ahead the way that it had been done.

Q. Did you have a discussion with Mr. Rau in the year 1942 concerning this, Miss Goldstein?

A. Yes, sir.

Q. Did you have a discussion with Mr. Rau in the year 1943? [478]

A. Yes, sir.

Q. Did you have more than one discussion?

A. When the income tax was to be made up, I told him that he is putting in a false income. I mean, receipts, that he wasn't putting in the right amount, that the full amount of receipts should be put in before anything was taken out as an income.

He told me to go according to the deposits.

Q. Did you have a discussion with him in 1944?

A. Yes, sir.

Q. To the same effect? A. Yes, sir.

Q. 1945? A. Yes, sir.

Q. You had a discussion with him in 1945?

A. Yes, sir.

Q. To the same effect regarding these understated receipts for the French Cafe and the Southern Wine and Liquor? A. Yes, sir.

Q. And what would his answer be in each of those years? A. The same thing.

Q. And what was that again?

A. That to go according to the deposits, to [479] show his receipts, and not the full receipts, before any deduction was taken out.

Q. Did you inform him clearly that his income tax was understated?

(Testimony of Rose Goldstein.)

A. I told him that, and I told him that he should put in the right amount.

Q. Did you have a discussion with him in 1946 regarding the understated receipts from the French Cafe, and the Southern Wine and Liquor Store?

A. I did.

Q. And was his answer the same as in previous years?

A. Yes, sir. He told me to go according to what they instructed me to do.

Q. They, meaning who?

A. Mr. Webb and Mr. Rau.

Q. Did you have a discussion with him in 1947 relative to this understatement? A. I did.

Q. That would be when you were preparing the 1946 income tax return; is that correct?

A. Yes, sir.

Q. Now, after you prepared the 1946 income tax return, and in 1947, the French Cafe was then a partnership, I believe, in that year?

A. It was. [480]

Q. It was. But the same practice was being observed by the Southern Wine and Liquor Store; wasn't it? A. Yes, sir.

Q. That is they were understating their receipts each day? A. Yes, sir.

Q. Did you have any discussion with Mr. Rau?

A. I did.

Q. During 1947 regarding the omissions in 1947?

A. That is when I told Mr. Rau that he had better, the tax shown, instead of increasing the

(Testimony of Rose Goldstein.)

supplies and so forth, because he will be caught and I said we will get all blamed for it on account of him.

Q. What did he say?

A. He said, "You go ahead the way I am telling you what to do," and he said, "The Government will not catch up with me." That is just the words; Mr. Webb was there at the time.

The Court: When did that discussion take place?

The Witness: When I was preparing the 1946 income tax.

The Court: When you were preparing the '46 return?

The Witness: Yes, sir, and showed him the records according to my books.

The Court: That was in 1947? [481]

A. Yes, sir.

The Court: Where did it take place?

The Witness: Right there in the Southern Hotel lobby, in back of the office there, in back of the desk.

The Court: In back of the office?

The Witness: Yes, sir.

Q. (By Mr. Gardner): Who else was present, Miss Goldstein?

A. Mr. Webb was there also.

The Court: Did you have any discussions with respect to the year 1947, itself?

The Witness: The same thing I told him, also.

Q. (By Mr. Gardner): Did you have more than

(Testimony of Rose Goldstein.)

one discussion with him during the year, during each of these years, regarding the income tax?

A. Oh, at different times I would tell him.

Q. At different times during each of the years?

A. Yes, sir.

Q. Did you tell him more than once in 1947, regarding the understatement of income, relative to the French Cafe, and the Southern Wine and Liquor Store?

A. Well, up until the hotel was demolished in '47. After that I didn't have nothing more to do with that.

Q. Now, what did you do with the books and records [482] of the French Cafe, and the Southern Wine and Liquor Store, after the hotel was demolished?

A. They were left there in the back office on the shelf there with the files.

Q. They were left in the back office?

A. Yes, sir.

Q. And did those records for the year 1947 show understated receipts for the French Cafe and the Southern Wine and Liquor Store?

A. Yes, sir.

Q. In other words, the income was understated, wasn't it? A. Yes, sir.

Q. In substantial amounts? A. Yes, sir.

Q. And the understatement resulting, or the understatement that you had informed Mr.—the understatement that you had informed Mr. Rau as to the year 1947, was the same understatement that

(Testimony of Rose Goldstein.)

was reflected in your books and records; is that correct? A. Yes, sir.

Q. Now, I would like to get back to the purchases, Mrs. Goldstein; according to these daily slips, that is Exhibits 21, 22 and 23; show once again Exhibit 21 as being illustrative of these other exhibits, by the time [483] we get down to the deposit, I notice that the supplies and the payouts have already been deducted from the gross receipts; is that correct? A. Yes, sir.

Q. And do I understand that in the year 1943 you put down, or recorded purchases in your records, maintained for the French Cafe?

A. Yes, sir.

Q. Now, the purchases have already been removed once on those daily slips, haven't they, Mrs. Goldstein? A. They have.

Q. Then any purchases that you record in your books and records are false, aren't they?

A. Yes, sir.

Q. They are duplications? A. Yes, sir.

Mr. Simpson: If your Honor please, I will be indulging with the leading statements and making conclusions in the interest of time, but this one I will have to object to.

The Court: These past few questions were leading. Counsel will endeavor to——

Mr. Gardner: Very well, your Honor.

The Court: ——not to lead the witness.

Mr. Gardner: Very well. [484]

Q. (By Mr. Gardner): Now, purchases for the

(Testimony of Rose Goldstein.)

French Cafe as shown on these daily slips, Mrs. Goldstein, I believe you have testified to the fact that the purchases were removed prior to the time that you reached a final figure, showing the day's receipts? A. Yes, sir.

Mr. Simpson: He is leading the witness again, your Honor.

Mr. Gardner: If the Court please, she has already testified to that.

The Court: In a sense, Counsel is merely summarizing what appears on the sheets.

Mr. Simpson: Yes, your Honor, but he is doing so in a way that he is leading her now, because of the way that he is doing it. He is now getting from this witness a conclusion that the purchases that she has on here have already been taken off prior to the time that they were written down here.

The result will be from the testimony that he is eliciting from her will be that they will be a duplicate deduction claimed for supplies and purchases, whereas we have already gotten from this witness that they neutralized each other, as your Honor understood it.

The way he is approaching it now, he will have the deductions coming out again, or that they should be [485] taken out again.

The Court: I am not sure you are using the word "purchases" in the same sense that the word purchases or supplies was used in connection with the so-called neutralizing items. Those neutralizing items, as I understood it, related only to those checks that were made out to cash in which rep-

(Testimony of Rose Goldstein.)

resented fictitious purchases, and not actual purchases.

I understood Counsel's last few questions to relate to actual purchases and not to the fictitious purchases.

Mr. Simpson: I may have misunderstood his question, the purpose for it, now.

The Court: Do I understand your question, did I misunderstand your question?

Mr. Gardner: No, your Honor.

The Court: The questions you were just putting to this witness right now related to the actual purchases, and not to the fictitious purchases that were neutralized?

Mr. Gardner: That is correct, your Honor.

Mr. Simpson: If your Honor please, I will stipulate that those purchases are on here, if that is what she is testifying to, within the journals.

Mr. Gardner: Will you stipulate that they are in there twice, then? If you will stipulate they are in there [486] twice, we can dispense with all this testimony.

Mr. Simpson: That is the whole point, the way I understood it is that he is now going to attempt to establish through this witness that there are double deductions for purchases; that is what I objected to, and he was leading her to come to that conclusion.

Mr. Gardner: That is exactly what I am going to establish.

The Court: Counsel may continue.

(Testimony of Rose Goldstein.)

Mr. Gardner: Thank you, your Honor.

Q. (By Mr. Gardner): Now, let's go back to this just once again.

The Court: There has been some confusion and I suggest you start over again.

Mr. Gardner: Very well, your Honor.

Q. (By Mr. Gardner): Referring once again to Exhibit 21, under date of January 2, 1944——

The Court: Is that the top sheet?

Mr. Gardner: That is the top sheet, your Honor.

Q. (By Mr. Gardner): There is a summary in the middle of the page, would you read that summary and explain what that summary consists of?

A. For January 2, 1944, the register reading was [487] \$552.11.

The Court: What did that represent?

The Witness: The full reading of the 24-hour shift.

The Court: And those, that figure represents the full receipts for that day, for that 24-hour period?

The Witness: For that day, yes, sir. And then in that reading, the \$2.55 meal tickets was rung up, which we deducted, which left the receipts **\$549.56.**

The Court: Those are the actual cash receipts?

The Witness: Yes, sir.

The Court: For the day?

The Witness: Yes, sir. And the payouts was \$32.57, which left the bank or deposit \$516.99, less the \$10 that was taken out for Mr. Rau, Sr., which left a balance of \$506.99.

Then they added \$150 for Mr. Rau, left the bal-

(Testimony of Rose Goldstein.)

ance of \$356.99, which was listed as receipts for the French Cafe.

The Court: You say they added \$150 or subtracted?

The Witness: They subtracted, pardon me.

Q. (By Mr. Gardner): That was also for Mr. Rau? A. Yes, sir.

Q. Now, going to the payouts here in the amount of \$32.57, would you once again pick up that figure and put it [488] in purchases, would you state whether or not you did that? A. I did.

Q. You did pick it up again?

A. Yes, sir.

Q. And you put it in purchases?

A. Yes, sir.

Q. Would that be placed in the book, Exhibit U for identification? A. It was.

Q. Now, would you state just how you arrived at the purchase figures shown for the French Cafe, as reflected in Exhibit U?

A. You are referring to '44?

Q. We are referring to '44. Let's get to '44. There you are. A. Well——

Q. Now, referring to the year 1944, in Exhibit U, relating to the records of the French Cafe——

A. Yes, sir.

Q. ——will you state how you received or where you obtained the information to put your figures down under purchases?

A. Well, I would take the check books, mark the check numbers and the amount, and credit my

(Testimony of Rose Goldstein.)

bank and debit my purchases. At the end of the month, I would take these [489] total cash receipts, add up all the column cash paid.

Q. You are referring to these total cash receipts, you are referring to these, to Exhibit 21, are you not? A. Yes, sir, and total all that.

Q. Total all that, all what, exactly what would you total? A. All the cash payouts.

Q. All the pay, cash payouts?

A. Yes, and put the full amount under the cash on that, and then debit to purchases.

Q. Debit that to purchases? A. Yes, sir.

The Court: What amount would you include for receipts?

A. The deposit, \$356.99 on that one.

The Court: So that for the date January 2, 1944, you recorded as receipts the amount of \$356.99?

The Witness: Ninety-nine cents.

The Court: And 99 cents. And you subtracted in addition purchases of \$32.57?

The Witness: Yes, sir.

Q. (By Mr. Gardner): Now, Miss Goldstein, the net effect of this was to duplicate purchases as to the French Cafe in the year 1944; is that correct? A. Yes, sir.

Q. Did you have any discussions with Mr. Rau concerning [490] these duplications?

A. I did.

Q. What did Mr. Rau say?

A. I told him where he was taking off the purchases twice, that he should have only taken them

(Testimony of Rose Goldstein.)

off once. He told me to go according to the way I was instructed.

The Court: You testified as to what you did with respect to the day of January 2, 1944. I would like Counsel to inquire as to whether similar practice was followed as to other days or years, and, if so, what days or years.

Q. (By Mr. Gardner): Regarding the duplication of purchases which you have just testified, regarding the daily sheet for the year, or for the date January 2, 1944, Exhibit 21, did you follow that practice throughout the year 1944, Mrs. Goldstein?

A. I did.

Q. And did you follow that practice throughout the year '45? A. I did.

Q. Did you follow that practice up to May 6 of 1946? A. I did.

Q. Did you follow that practice in the year 1943?

A. To the best of my recollection, yes, I [491] did.

Q. You did? A. Yes, sir.

Q. Did you follow that practice in the year 1942?

A. Well, I would have to look through the records to see.

Q. All right. Would you look in the records, please, Mrs. Goldstein; you are now looking at Exhibit U for identification; is that correct?

A. Yes, sir; '42.

Q. 1942? A. Not in '42.

(Testimony of Rose Goldstein.)

Q. Not in '42? A. No, sir.

Q. This started in 1943 then?

A. Yes, sir.

Q. Now, I will attempt to summarize your testimony; would you listen closely, please?

Any purchases appearing in your records, that is Exhibit U for identification, for the French Cafe, are a duplication of purchases appearing on the daily slips, and for which you have already taken into account in computing income for the French Cafe; is that correct? A. Yes, sir.

The Court: For what years, Mr. Gardner? [492]

Q. (By Mr. Gardner): Now, that applies to each of the years 1943; is that correct, Mrs. Goldstein?

A. I am looking up '43 to be sure on that.

Q. All right.

Mr. Simpson: If your Honor please, may I suggest a recess at this time while she is looking up this information?

The Court: Very well. There will be a recess.

(Short recess.)

Mr. Gardner: I would like to have this exhibit marked for identification as Respondent's next in order.

The Clerk: Respondent's Exhibit V marked for identification.

(The document above referred to was marked Respondent's Exhibit V for identification.)

(Testimony of Rose Goldstein.)

Q. (By Mr. Gardner): Mrs. Goldstein, during the recess that we just had, did I request you to examine Exhibit U for identification, that is your books and records relating to the French Cafe for the years 1943, 1944, 1945 and 1946?

A. Yes, sir.

Q. Relative to cash purchases shown in your books and records, that is? A. Yes, sir.

Q. Exhibit U? [493] A. Yes, sir.

Q. Did you do that? A. I did.

Q. I hand you what has been marked Exhibit V for identification, and referring to the year 1943, would you state the total amount of cash purchases reflected in your books and records for the French Cafe, that is Exhibit U?

A. You mean from the beginning to the end?

Q. Just the total, if you please.

A. From 1943 it was \$17,872.79.

Q. Now, those cash purchases in effect are a duplication, are they not, Mrs. Goldstein?

A. Yes, sir.

Q. In other words, purchases is increased by that amount and you have already taken credit for them previously, haven't you? A. Yes, sir.

Q. Referring to the second page of Exhibit V, for identification, for the year 1944, what did Exhibit U reveal to be your total cash purchases for that year? A. \$24,140.70.

Q. And this is the same as in the year 1943, has the effect of duplicating purchases to that extent; is that correct? A. Yes, sir. [494]

(Testimony of Rose Goldstein.)

Q. Now, would you refer to the cash purchases for the year 1945, and state what the total cash purchases shown in your records, Exhibit U, for that year? A. \$1,279.14.

Q. This means that purchases are in effect duplicated to that extent for the year 1945; is that correct? A. Yes, sir.

Q. And would you state what the total cash purchases reflected in Exhibit U, as to the year 1946, are? A. \$1,969.91.

Q. And here, as in the prior years, this means that purchases are duplicated to that extent; is that correct? A. Yes, sir.

Q. Now, all of these cash purchases relate to the French Cafe; is that correct? A. Yes, sir.

Q. In each of these years? A. Yes, sir.

Mr. Gardner: Offer in evidence Respondent's Exhibit V.

Mr. Simpson: No objection.

The Court: No objection.

(The document heretofore marked as Respondent's Exhibit V for identification, was received in evidence.) [495]

Q. (By Mr. Gardner): Now, Mrs. Goldstein, I believe you testified that you knew Mr. Rau from some time around 1935, on through 1947; is that correct? A. Yes, sir.

Q. Directing your attention to the year 1942, what would you say his physical condition was during that year? A. Okay.

(Testimony of Rose Goldstein.)

Q. Did he walk with a cane? A. Not then.

Q. Not then? A. No, sir.

Q. Now, in the year 1942, did he take an active interest in the business? A. Yes, sir.

Q. I am referring now to the French Cafe, the Southern Wine and Liquor, especially, did he take an interest in those businesses; were you able to observe that?

A. Yes; he was there at all times.

Q. What was his mental condition, as a lay person, what was your opinion?

Mr. Simpson: Object, your Honor. This witness is certainly not qualified to testify with respect to Mr. Rau's mental condition. We had that question yesterday in [496] connection with the general practitioner.

The Court: I will not receive any evidence from this witness as an expert on Mr. Rau's mental condition, medically, but I will receive evidence from her as to what she observed as a layman, with respect to his alertness, and general responsiveness.

Mr. Gardner: Would you read the question, please?

(Question read.)

The Witness: To my recollection, he is like any ordinary well man, taking care of his line of duty and his businesses.

Q. (By Mr. Gardner): Did he have many businesses, Mrs. Goldstein?

A. Well, he had those three, Southern Hotel, French Cafe, and Southern Wine and Liquor.

(Testimony of Rose Goldstein.)

Q. Did you have any discussions with him regarding the books and records, the manner in which you kept them and financial matters?

A. Oh, yes. He knew everything that was going on.

Q. Did he make it a practice to know everything that was going on?

A. Oh, yes, sir. We had to show him the check banks; we had to show him whatever was paid out, and what was—what the transactions were.

Q. Did he further direct you as to how to proceed? [497]

A. Yes, sir. I took all instructions direct from him.

Q. Now, continuing through the period involved, that is 1943, 1944, 1946 and 1947—

The Court: You have omitted 1945, I think.

Mr. Gardner: 1945, excuse me.

Q. (By Mr. Gardner): 1946 and 1947, did he continue to keep a close watch over the books and records maintained by you?

A. Well, in '47 he was, he was living out at his home.

Q. I see.

A. But he would come down most—and then in '46, I think, is when he moved out there.

Q. I see.

A. But he came down every day to find out what was going on.

Q. Did it appear to you as his bookkeeper that he knew exactly what was going on?

(Testimony of Rose Goldstein.)

A. Up until the time that I was taking care of the books——

The Court: I don't understand that answer.

The Witness: Up until the time that I took care of the books, and then he went into partnership with Mr. Bender.

The Court: You mean during the time that you kept [498] the books?

The Witness: Yes, sir.

The Court: And that terminated when?

The Witness: When he went in partnership with Mr. Phil Bender.

Q. (By Mr. Gardner): You are now referring to the French Cafe, are you not?

A. Yes, sir.

Q. Did you continue to keep the books of the Southern Wine and Liquor Store?

A. I did.

Q. On up until the time that the Southern Hotel was torn down? A. Yes, sir.

Q. Now, all during this period that you kept the books and records for Mr. Rau, did he maintain a close inspection of these records, and a closer supervision of the records?

A. Yes, because when he came down, he would check, go behind the desk, check the book, and then find out what our payouts were.

Q. Now, in the year 1946, I believe, he had an acute case of phlebitis; is that correct, or do you recall?

(Testimony of Rose Goldstein.)

A. Well, that is when he had that Mrs. Dorsey take [499] care of him then.

Q. Do you recall whether or not he could only walk with a cane?

A. Well, he sometimes walked with a cane.

Q. Now, this is in 1946?

A. To my recollection he would walk with his cane.

Q. Did he have a wheel chair in 1946 or 1947?

A. I have only seen the wheel chair once, when we were at the hotel, where the nurse brought him down to eat, and that is the only time I saw it there. After the hotel—after—I mean, after we left the hotel, in August 17, 1947, when they opened up the French Cafe at Chester and 18th, that is when I also saw him in a wheel chair.

Mr. Simpson: Can we establish, if your Honor please, the first time that you saw the wheel chair in what year was that, approximately what month?

Mr. Gardner: That is what I am trying to get to, your Honor.

Mr. Simpson: Yes.

Q. (By Mr. Gardner): When was the first time that you did see Mr. Rau in a wheel chair?

A. Well, I can't recall the year, but it was after Mrs. Dorsey took care of him.

Q. She started taking care of him when? [500]

A. I couldn't say.

Q. Was it in—is it '46?

A. I can't recall what month, what year it was.

Q. But it is your testimony that during all of

(Testimony of Rose Goldstein.)

these years on up and including the date of August 7, 1947, as long as you took care of the books and records of the Southern Wine and Liquor Company, and the Southern Hotel, that Mr. Rau kept a close watch on the books and records, and a close supervision over the activities of these businesses?

A. Yes, sir.

Q. Now, Mrs. Goldstein, you knew all during these years that Mr. Rau was understating his income, didn't you? A. I did.

Q. On his income tax returns? A. I did.

Q. You knew that he understated his income in substantial amounts in each of the returns filed for the years 1942, 1943, 1944, 1945 and 1946, which you prepared? A. Yes, sir.

Q. And I believe your testimony is that you discussed this with Mr. Rau on each occasion?

A. I did.

Q. Did you subsequently take any steps to inform the Government of the understated [501] income? A. I did.

Q. When did you do this, Miss Goldstein?

A. Well, I don't recall the year, but I took it up with the Bakersfield income tax agent, Mr. Branas.

Q. Mr. Branas? A. Yes, sir.

Q. Have you put in a claim for reward, Miss Goldstein? A. No, sir.

Mr. Simpson: Can we get the date from this witness, on the date she informed the Internal Revenue Service? That hasn't been established yet.

(Testimony of Rose Goldstein.)

Mr. Gardner: No further questions, your [502] Honor.

Mr. Simpson: Can we establish the date?

The Court: You may ask her.

Mr. Simpson: I will get it.

Mr. Gardner: Excuse me. Did I miss something?

Mr. Simpson: I just want to establish the date she informed the Internal Revenue Service, never did establish that.

Cross-Examination

By Mr. Simpson:

Q. In connection with the last question asked of you by Counsel for the Respondent, as to the advising of the Internal Revenue Service, the incorrectness or falsity of Mr. Rau's returns, will you state for the record, please, the approximate date on which you informed the Internal Revenue Service of that condition?

A. I just don't recall what year it was, whether it was '48 or '49, or whether it was before. I can't recall.

Q. Do you recall whether or not it was after he had a stroke, or do you know that he had a stroke in 1947?

A. No, because I wasn't up in his room, or at home there when he had this stroke.

Q. Well, you went out to his home, though, did you not?

(Testimony of Rose Goldstein.)

A. Once in awhile I would visit there, while the nurse was there.

Q. Well, then, if he had a nurse, then you would have known it in 1947, wouldn't you, Mrs. Goldstein?

A. Unless I was told he had one. [503]

Q. You went out to see him in his home. Let's establish that you did that in 1947?

A. I would go out there to visit him.

Q. Well then, if he had a stroke would you have known about it when you went out to see him in 1947?

A. I don't recall whether I would or not.

Q. Well, you knew the man, didn't you?

A. Yes, I did.

Q. And did he have a nurse out there at his home with him?

A. He had his housekeeper, his aid nurse.

The Court: Did you go out to see him after the hotel was demolished?

A. I had gone out and seen him once in a while.

The Court: Even after the hotel was demolished?

The Witness: Yes, sir.

The Court: Were you working for him at that time?

The Witness: No, sir.

The Court: You stopped?

The Witness: Pardon me. I was at the hotel until the hotel was completely demolished, and took everything out.

(Testimony of Rose Goldstein.)

The Court: That was in, approximately in August of 1947?

The Witness: '47, yes, sir.

The Court: Did you work for him after that?

The Witness: Only—no, only to get to close the books for the records of the Southern Hotel and the Southern Wine and Liquor. [504]

Q. (By Mr. Simpson): Now, Miss Goldstein, with respect to your duties, if I understand you correctly, and I don't want to consume too much time on this, you were the bookkeeper for all of the years '42 through '46, up until the time that the partnership was formed by Mr. Rau and Mr. Bender? A. Yes, sir.

Q. You prepared the returns for each one of those years? A. Yes, sir.

Q. How many hours a day and it will also relate to the Southern Hotel, the Southern Wine and Liquor Store, and the French Cafe, and you kept the books on those three businesses?

A. Yes, sir.

Q. Did your duties also encompass those in connection with the Edmund Hotel that Mr. Rau owned?

A. The only time is when he put in the system there at the Edmund Hotel.

Q. Just answer the question. Did you have anything to do with keeping the books?

Mr. Gardner: If the Court please—

Mr. Simpson: I want to know if she kept the books for the Edmund Hotel.

(Testimony of Rose Goldstein.)

Q. (By Mr. Simpson): Did you?

A. No.

Q. Did you keep the books at the Sea Spray Hotel? [505]

A. Only got the books from the manager.

Q. Did you keep the books on the Sea Spray Court?

A. There was no books kept on that.

Q. You did not keep any books?

A. Only from records; that is all.

The Court: Did you have anything to do with the records of that enterprise?

The Witness: No, sir.

Q. (By Mr. Simpson): Now, we have your duties relating to the bar, the French Cafe, and the Southern Hotel. A. Yes, sir.

Q. As far as keeping the books and records is concerned; is that correct? A. Yes, sir.

Q. How many hours a day would you devote to that, Miss Goldstein?

A. I didn't specify any hours at all. Whenever I had time off of my work, I would take care of the books. I had no set hours.

Q. What did you receive as a salary as book-keeper for the work that you did for Mr. Rau?

A. \$10 a month.

Q. \$10 a month? A. Yes, sir.

Q. For keeping the records for these three businesses for the years 1942 up to the time the partnership was formed in 1946? [506]

A. Yes, sir.

(Testimony of Rose Goldstein.)

Q. Is that correct?

A. And he gave me my meals from the French Cafe.

Q. And you had your meals? A. Yes, sir.

Q. How many meals, one?

A. Sometimes one, sometimes two.

Q. Were you satisfied with that arrangement of \$10 a month for that work?

A. Yes, because I had my desk there in the lobby.

Q. Now, what desk did you have in the lobby?

A. My public stenographer desk.

Q. What else did you do other than being a public stenographer?

A. Notary Public, mimeographing, telephone service, and direct mail advertising; also, I was a deputy registrar, and then I did some court reporting.

Q. Did you also prepare income tax returns?

A. I did, I did income taxes.

Q. Did you keep books and records for anyone else, other than Mr. Rau? A. No, sir.

Q. You were a bookkeeper for him only, and for no one else? A. Yes, sir.

Q. Now, when Mr. Webb was away from the hotel, did you take over his duties as clerk in the hotel?

A. What part are you referring to, when he was away [507] from the hotel?

Q. Well, during this period from 1942, up through 1946, Mr. Webb has testified, you were in

(Testimony of Rose Goldstein.)

the courtroom, you heard him say that there were times when he wasn't there, and that somebody else would relieve him. I think he mentioned you, on occasion, that you did relieve him.

A. I relieved him during the day from 12:00 to 2:00, when he went up to take his nap.

Q. Mr. Webb took a nap?

A. Yes, sir. And then on Sunday, I—he would work a short, I think I would relieve him, either at 10:00 or 12:00 noon, and then the next Sunday, I would relieve him all day.

Q. With respect to the office that you had, as public stenographer, direct mail advertising, telephone answering service, preparing income tax returns, mimeographing, when did you begin that business in Bakersfield, what year?

A. Oh, I can't recall just when I started as public stenographer.

Q. Was it before 1942?

A. Oh, yes. Approximately——

Q. All before 1942, well, before 1942?

A. Yes, sir.

Q. Was it as early as 1935?

A. No, sir. I don't think so.

Q. Was it some place between 1935 and 1940?

A. It was after the Judge was defeated in [508] the Justice Court when I was a deputy clerk there.

Q. Yes, but now let's place the date on which you began this business of yours as public stenographer, preparing income tax returns, mimeographing, direct mail advertising, telephone answer-

(Testimony of Rose Goldstein.)

ing service, was it sometime between 1935 and 1940 that you began that business?

A. Well, I can't just recall what year it was, before I moved over into the Southern Hotel.

Q. You can't recall when you started the business, or you can't recall when you moved into the Southern Hotel, which is it?

A. You are asking me when I started my public stenographer business?

Q. Yes.

A. See, and I can't say whether it is between 1934 or '40, or the time I come to the Southern Hotel.

Q. And you came to the Southern Hotel in what year?

A. I think it was before 1942, or after Mr. Rau took over the Southern Hotel.

Q. Before 1942, or after he took over the Southern Hotel?

A. Well, it was before 1942, whenever he took over the Southern Hotel, it was either three or six months after that when I moved into the Southern Hotel lobby.

Q. Well, let me ask you the question this way: did you have this business at the time you moved into the Southern Hotel? A. Yes, sir. [509]

Q. You did? A. Yes, sir.

Q. Now, you had this particular business involving all of these different things in addition to that, you took on the task of keeping books and records of three different businesses involving hundreds of

(Testimony of Rose Goldstein.)

thousands a year, as you have testified to, for the sum of \$10 a month, in addition to the many duties that you have related? A. Yes, sir.

Q. Would you please explain to the Court why you wanted to take on these extra burdens involving this much money which you have certainly testified to, for the sum of \$10 a month, when you had a business of public stenography, direct mail advertising, telephone answering service, mimeographing, and preparation of Federal income tax returns; please explain to the Court why you took on these, this task here of all these records for \$10 a month?

A. Because that didn't take much time to do.

Q. Oh, you didn't spend but very little time on it? A. Yes, sir.

Q. Devoted about how many hours a day to it?

A. I can't say.

Q. Well, you worked on them for years, '42, '43, '4, '5 and part of 1946; that is five years, you spend a lot of time on those records, I would assume.

A. Not when you make your daily records, when you take them and put them in your journal. Sometimes I would [510] work, maybe every day, sometimes maybe once a week on them.

Q. Now, Miss Goldstein, this is Exhibit U. Miss Goldstein, I show you Respondent's Exhibit U for identification, and ask you if that is the cash journal?

A. Yes, that is the cash check and cash journal.

(Testimony of Rose Goldstein.)

Q. The tabs that you see on the end of these sheets, French Cafe, January 1941, June 1946, Southern Wine and Liquor, June 1942, August 1947, is that in your handwriting? A. No, sir.

Q. Did you put those tabs on there?

A. No, sir.

Q. Who put the tabs on?

A. I don't know.

Q. Were they put—were they there when you picked up these records, when you first got them?

A. Only in the courtroom.

Q. Only in the courtroom?

A. Yes, in the courtroom here.

Q. Now, there is also another one, Southern Hotel January 1941 to September 1947, and you kept the records, and these were all in your handwriting? A. Yes, sir.

Q. Were there any other records that you kept for Mr. Rau, other than what I have shown you?

A. There was a cash book for the Southern Hotel, showing the room receipts.

The Court: We will reconvene at two o'clock.

(Whereupon, the hearing in the above-entitled case was recessed at 12:00 o'clock, until 2:00 o'clock p.m. the same day.) [511]

Afternoon Session—1:45 P.M.

ROSE GOLDSTEIN

resumed the stand, having been previously duly sworn, was examined and testified further as follows:

Cross-Examination

(Continued)

By Mr. Simpson:

Q. Miss Goldstein, I think when we were finishing up before noon recess, we discussed something about the date on which you informed the Internal Revenue Service of the falsification of information in the books and records that you maintain, as well as the income tax returns.

Would you please state again the name of the person to whom you conveyed that information?

A. Mr. Branäs.

Q. How do you spell his last name?

A. Capital B-r-a-n-a-s.

Q. Do you know his first name?

A. No, I don't recall it right now.

Q. And he was in Bakersfield?

A. Yes, sir.

Q. Internal Revenue Service?

A. Yes, sir.

Q. Was he a revenue agent, do you know?

A. Yes, sir.

Q. Do you know where he is now?

A. I don't know if he still has his office in the Haberfelde Building or not, but that is where he did have it.

(Testimony of Rose Goldstein.)

Q. Is he still with the Internal Revenue Service? A. As far as I know. [512]

Q. Now, the month and the year in which you informed the Internal Revenue Service?

A. I am not—I don't recall what the month or the year, but it was between 1948 and 1949.

Q. What prompted you at that time to inform the Internal Revenue Service of the condition which you knew had prevailed for many years prior to that?

A. For the simple reason I know that it was being done wrongly, and that if I didn't report it they would think that I was in cahoots with Mr. Rau. And I wanted to protect myself.

Q. Could you not have done that by refusing to prepare the income tax return for 1942?

A. I was in Mr. Rau's employment at the time.

Q. But you had a separate business of your own?

A. Yes, sir.

Q. Therefore, please explain, if you will, why it is that if you did prepare a false return for 1942, knowing it to be false at the time you prepared it— A. I don't know why I didn't.

Q. You don't know why you didn't do something about it then? A. Yes, sir.

Q. Well, can you state why you did not refuse to file or prepare a false return that you knew was false at that time?

A. I explained to Mr. Rau the conditions. He told me to go right ahead and not worry. [513]

Q. If Mr. Rau had told you anything else that

(Testimony of Rose Goldstein.)

was wrong, you would have done it because you were his employee? A. Naturally.

Q. Naturally. Now, you had this separate office which you were a public stenographer, Notary Public, direct mail advertising, telephone answering service, and other things. You were receiving \$10 a month to keep the books and records for the Southern Wine and Liquor, Southern Hotel, French Cafe; what were you paid when you prepared Mr. Rau's income tax return for 1942?

A. No money for preparing any income tax.

Q. You were not paid for that?

A. No, sir.

Q. Were you paid for it in 1943?

A. No, sir.

Q. In 1944? A. No, sir.

Q. In 1945? A. No, sir.

Q. 1946? A. No, sir.

Q. Then the \$10 that you received per month, not only covered the keeping of the books for these three different businesses, but also the preparation and filing of a Federal income tax return?

A. Yes, sir.

Q. You had a business of your own at that time?

A. Yes, sir, and— [514]

[Clerk's Memo: Two pages numbered 514.

Reporter's error in numbering.]

Q. You want to say anything else? All I want to know, you state you had that business at that time? A. Yes, sir.

Q. You did; thank you.

(Testimony of Rose Goldstein.)

Did you need this \$10 a month to augment your income? A. No, sir.

Q. Would you care to state whether or not the keeping of books and records for three different businesses, preparation and filing of income tax return, calls for more salary than \$10 a month?

A. I figured my desk space worth \$100 or more, in the hotel lobby, which was a very good location, and gave me advertisement.

Q. Did you consider that as income your own income tax return?

A. I reported whatever I made.

Q. Well, the value of your office, do you consider that to be income to you?

A. Not exactly.

Q. Not exactly, consider that, but you consider yourself an expert bookkeeper?

A. No, not exactly.

Q. Do you consider yourself an expert in the preparation of income tax returns?

A. According to my understanding.

Q. You are an expert? A. No, I am not.

Q. For preparation of returns?

A. No, sir.

Q. You prepared returns for other people?

A. I did.

Q. Did you ever prepare an income tax return for Mr. Harry Jackson? A. I don't recall.

Q. Do you know whether or not Mr. Harry Jackson operated a tire business in Bakersfield?

(Testimony of Rose Goldstein.)

A. I remember of a Jackson Tire Company in Bakersfield.

Q. You do not recall whether or not you prepared a return then for Mr. Harry Jackson?

A. No, I can't recall it at this time.

Q. Do you know whether or not you were called upon at a subsequent date in connection with an income tax audit of a Mr. Harry Jackson?

A. No, I don't recall.

Q. Don't recall? A. No, sir.

Q. Now, coming down to the cash that was taken according to Mr. Webb's testimony, and your own, from the French Cafe, the Southern Wine and Liquor Bar, on those occasions when Mr. Webb was not in the hotel, what did you do with the money?

A. It was returned over to Mr. Walter R. Rau, Sr.

Q. Where was he?

A. In the hotel lobby in back of the desk [515] there.

Q. In the back of the desk is where you turned the money over to him?

A. Yes, sir, when he would be down there.

Q. And you handed him the cash?

A. He took the money and put it in the envelope in the back safe.

Q. Did you give him \$10 and \$25, or total of \$35 on those days that Mr. Webb was not there, and hand the \$35 to Mr. Rau, personally?

(Testimony of Rose Goldstein.)

A. I did not take it out of the cash; he took it, himself.

Q. Now, explain how Mr. Rau took the cash?

A. The cash was right there on the hotel desk, and he came out. I showed him the figures, the paper, he took the \$10 out of the French Cafe, the \$25 out of Southern Wine and Liquor.

Q. And you showed him what information?

A. From those cash sheets.

Q. The French Cafe? A. Yes, sir.

Q. And I will show you Exhibit 21, and ask you, January 2 is the date, here is a \$10 figure subtracted from \$516.99, leaving a figure of \$506.99; that is correct, is it not?

A. According to the figures there.

Q. Now, there is an additional figure of \$150 immediately below the \$506.99. Now, is that the sheet that you exhibited to Mr. Rau at the time you handed him [516] the cash?

A. Not that date. If I wasn't working at that date, I couldn't.

Q. Well, only for purpose of illustrating the procedure that you followed on those occasions when Mr. Webb was away. A. Yes, sir.

Q. That is what you showed to Mr. Rau?

A. I did.

Q. These daily sheets of the French Cafe?

A. Yes, sir.

Q. You showed him the entries that were entered there on the bottom?

A. Before these entries was made, he took the

(Testimony of Rose Goldstein.)

\$10. I put \$10—he was the one who would take the amount of that \$150 or whatever he wanted; then he would have me take, deduct it from the balance and that was the deposit.

Q. My question is, you showed him the \$10 figure, if you wrote it down, and the \$150 figure, if you wrote that down, that was made a record of how much was taken out?

A. He told me to take the \$10 off, then he would tell me to take the \$100 or whatever amount he wanted to take off, which I showed on that paper.

Q. And then you actually took a pencil and put the figures on that sheet?

A. Yes, while I was working.

Q. While you were working?

A. For Mr. Webb. [517]

Q. And you took that sheet on which you had already written the \$10 figure, or \$150 figure, as the case may be, and showed it to Mr. Rau?

A. I did.

Q. And then at the same time you handed him an equal amount of cash to correspond with the amount that was shown on that daily slip?

A. The \$10, plus the \$150, or \$160, which he took out of that money, himself.

Q. So, you wrote the figures down on the French Cafe daily sheet, on those occasions?

A. Those sheets, I never put them in the book.

Q. I know, but what I am trying to get from you, you actually wrote the figure, yourself, in pencil on the daily sheet of the French Cafe?

(Testimony of Rose Goldstein.)

A. When I was working for Mr. Webb.

Q. When you were working for Mr. Webb.

A. When he was off. And I took his place, and Mr. Rau would be there before any transaction would be taken, any cash transaction would be taken off of the cash sheets.

Q. So then you, as well as Mr. Webb, wrote the figures on the daily sheets of the French Cafe?

A. According to Mr. Rau's orders.

Q. Now, just a minute. Did you, yourself, personally write the figure down on the daily sheet of the French Cafe?

A. Not without orders from Mr. Rau. [518]

Q. But you did it? A. Yes, sir.

Q. And then you showed it to him?

A. Mr. Rau was there first, before that money was taken, or put on those cash sheets. He was the one that told me to show the \$10, plus the amount that was taken out on week ends.

Q. Would you please explain what you mean, he was there first?

A. He was down there at the office, when he came down, he wanted to know where the records and the receipts, I would take those out, show it to him right there, then he would tell me to take the \$10 out of the cash, and whatever amount he wanted to take out on the larger amount.

Q. And then you made the note?

A. Then while he was still there, I deducted them off of this here.

(Testimony of Rose Goldstein.)

Q. He observed you writing down \$10, subtracting it from the net proceeds of the receipts for that day, and then if there was \$150, he saw you write down \$150, and subtract that and keeping, in keeping a record of it? A. Yes, sir.

Q. Now, did he make any comment to you when he saw you keeping a report of the cheating?

A. No, he never made any comment.

Q. In other words, he saw you keeping the record of his cheating on his records?

A. Yes, sir. [519]

Q. You are a tax expert and a bookkeeper, and you were keeping a daily record of this man's cheating; isn't that correct now, Miss Goldstein?

A. When I first went over to the Southern Hotel, I wasn't doing much tax, income work, and then when I started to take Mr. Webb's job, those instructions were given me what to do. But when Mr. Webb was not there, and Mr. Rau came down, he told me about taking the \$10 off, plus the amount that he wanted off on the larger amount.

Q. But now, I just want to have it for the record that you did show him the daily sheet explaining to him that day by day you were keeping a detailed account of his cheating?

A. I don't know what he did with that money.

Q. Well, didn't you prepare his income tax returns? A. Yes, sir.

Q. Well then, don't you know what he did with it?

(Testimony of Rose Goldstein.)

A. Not the money he took out of his pocket. He didn't turn it back into the businesses.

Q. Well, you knew he didn't report it as income, though, did you not?

A. I know it. I notified him of it.

Q. Well, didn't he already know it?

A. Yes, sir, he knew about it, but he continued, told me to continue on the way he had told me to do. [520]

Q. Well then, on these occasions when you talked to him, when you were, exhibited to him the income tax return that you prepared, and showed it to him, you told him again that it was wrong; is that it? A. I did.

Q. Well, didn't he already know that it was wrong?

A. Yes, but he just laughed and shrugged his shoulders.

Q. Please state why you had to tell him again, if it was wrong, if you already had told him, you already had informed him, as I understand your testimony, from these daily sheets, or a detailed accounting of this man's cheating and he was well aware of it, made no comment, and agreed that is the way it should be done; is that so?

A. That is the orders from Mr. Rau, Sr.

Q. And in 1942, his mind was very alert, I believe you stated? A. Yes, sir.

Q. And it was also true all the way through 1947? A. Yes, sir.

Q. Very alert. Now, you showed this man who

(Testimony of Rose Goldstein.)

has an alert mind these records of his cheating, and now I want to have it to establish it clearly that he made no comment? [521]

A. No, sir.

Q. When he saw it?

A. He knew what was going on, and he never made any more comment on it.

Q. Thank you. Now, he was downstairs in the hotel in the main lobby when you showed him the daily cash sheets of the French Cafe?

A. When he would come down from his room, downstairs, and he would always come into the hotel lobby, into the hotel behind the desk of the hotel lobby, where the office was, for the Southern Hotel.

Q. And that he did every day?

A. Yes, sir.

Q. And did you see him look at these sheets every day?

A. Well, when Mr. Webb was there, I had my own work to do. I wasn't paying any attention to that, only when I was there.

Q. So, only on those occasions that you were there, and Mr. Webb wasn't? A. Yes, sir.

Q. How far away was your desk space from the table on which these papers would be left?

A. From the Judge's desk, to about to the end of that fence there. [522]

Q. That is how far away your office was?

A. Yes, sir.

Q. You could see Mr. Rau, when you were at your desk every day when Mr. Webb was there, and

(Testimony of Rose Goldstein.)

you were taking care of your own business, you saw Mr. Rau come down and look over these daily sheets of the French Cafe?

A. I didn't say that I could see him do it. He would be there. What they were doing, I don't know.

Q. All right, thank you.

Now, did you ever take those daily sheets up to Mr. Rau's room in the hotel, upstairs?

A. I don't recall whether I did or whether Mr. Webb did.

Q. Can you state whether or not you ever did it, yourself, personally?

A. No, not to my knowledge.

Q. From whom did you receive the information to put down on the daily sheets of the French Cafe?

A. Both Mr. Webb and Mr. Rau.

Q. Miss Goldstein, when Mr. Webb was away, who handed you the daily cash sheets from the French Cafe?

A. From the steward or the manager of the French Cafe. Bring it in in a box.

Q. In a box? A. With the money. [523]

Q. With the money?

A. Of the receipts taken from the register for the day's receipts.

Q. Did they have a cash register tape?

A. Yes, sir. It was right there in the box.

Q. What did you do with the cash register tape?

A. Left it there until Mr. Rau came downstairs. I handed it to him with the cash sheet.

(Testimony of Rose Goldstein.)

Q. Now, you handed both the tapes and the daily cash sheets? A. Yes, sir.

Q. To Mr. Rau? A. Yes, sir.

Q. At the same time you handed him the cash?

A. It was in the cigar box there.

Q. Did you put it in the cigar box?

A. No, sir. It was handed to me from the French Cafe.

Q. In a cigar box? A. Yes, sir.

Q. Did you open the cigar box?

A. When Mr. Rau came down, that is when I opened it.

Q. Then did you take the cash out of the cigar box, and hand it personally to Mr. Rau? [524]

A. Took it out and counted it in front of Mr. Rau, show him what the balance was after the cash payouts. Then he told me to take the \$10 off of that; then if it was on a Saturday or Sunday, or holiday, I was working, he would tell me the amount to take off of that balance.

Q. Now, let's get right down to the cash, itself, taken out of the cigar box, and did you hand it to Mr. Rau personally?

A. Hand what to Mr. Rau?

Q. The cash?

A. I gave it out, took the money out of the cigar box, put it on the counter, counted while Mr. Rau was there, less whatever the payout of the cash payouts was, and the balance of that he told me to take \$10 out of that cash, then also whatever

(Testimony of Rose Goldstein.)

amount, if it was Saturday, Sunday or holiday, he was the one that told the amount to take out.

Q. What was done with the remaining cash?

A. That was put back in the box, and left there. When Mr. Webb come, he took care of that, made the deposits, entered it in the daily year book. I had nothing more to do with that.

Q. You left the cash in the cigar box?

A. Yes, sir.

Q. And when Mr. Webb returned, you presumed, but you didn't see him do it, you presume that Mr. Webb took [525] the cash out of the cigar box?

A. Whatever he does with it when he takes it out to make up the deposit.

Q. Did you ever make a deposit in the bank account for Mr. Rau, during Mr. Webb's absence?

A. I might have. I am not sure whether I did or I didn't. I might have done it while he was away on his vacation, which I would have to make the deposit slip up for him.

Q. You heard Mr. Webb testify that he was out for about a week or ten days, couldn't remember the year, maybe 1944 or 1945, something like that, he was in the Mercy Hospital. During that time, did you make the deposits for Mr. Webb?

A. According to——

Q. For Mr. Rau.

A. When Mr. Rau was there, when those deposit slips were made up——

Q. Did you make up the deposit slips for Mr. Rau?

(Testimony of Rose Goldstein.)

A. Yes, sir, I had to do it when he told me to.

Q. Where were those deposit slips kept?

A. The blank ones?

Q. The deposit—

A. They were kept right there where we kept the check books in the drawer, right in front of the hotel office. [526]

Q. Have you seen those deposit slips at any time since they were left at the hotel? A. No, sir.

Q. Did you have occasion to use those deposit slips at all in your bookkeeping? A. No, sir.

Q. If money was deposited to his bank account, what kind of a record did you make that day, when Mr. Webb was away?

A. Away, when he was sick or on his vacation?

Q. Yes. A. Or week ends?

Q. Either one.

A. Mr. Rau, I showed the book there, I kept all those slips until Mr. Webb come back from his vacation. I never put them in the book.

Q. Now, the books and records that you kept, where were they actually maintained in that hotel?

A. In the top drawer of the desk in the back office.

Q. But not in your office where you conducted your business? A. No, sir.

Q. Miss Goldstein, do you recall revenue agent Walter Slatter?

A. No, I don't recall. You know, I don't know their [527] names much.

(Testimony of Rose Goldstein.)

Q. Do you recall an examination of Mr. Rau's income tax returns for the years 1942, 1943, and 1944, in which there was an additional assessment made against Mr. Rau?

A. No. He might be, but I just don't recall it at this time.

Q. You don't recall it? A. No, sir.

Q. Did you ever go upstairs to Mr. Rau's room with Mr. Slatter?

A. If I did, I might have, but I don't recall. I might have gone up many times with different people up to Mr. Rau's room.

Q. You were the bookkeeper and you had the books? A. Yes, sir.

Q. Mr. Rau's income tax returns and it would show were audited by Mr. Walter Slatter. He filed a report.

Did he make that adjustment without your knowledge?

A. What do you mean, he made that adjustment without my knowledge?

Q. To increase Mr. Rau's income tax liability for those years?

A. If he was there, and he was up to see Mr. Rau, and told Mr. Rau, naturally, he must have.

Q. You don't recall Mr. Rau having to pay \$20,000 [528] additional taxes?

A. I don't remember.

Q. Now, if he wrote a check to the Collector of Internal Revenue for \$20,000, would you have made the entry in the journal? A. No.

(Testimony of Rose Goldstein.)

Q. Where would you make the entry, Miss Goldstein?

Mr. Gardner: If the Court please, if Counsel for Petitioner intends to introduce evidence at variance with anything she might say, I have no objection to this line of cross-examination; otherwise, there is nothing in the record relating to any prior investigation and this is going beyond the scope of the direct.

And I object to these questions on that ground.

The Court: What is the purpose of this line of inquiry, Mr. Simpson?

Mr. Simpson: The purpose is to determine the extent to which this witness assisted the revenue agent in determining the income for the years in which adjustment was made, for the years 1942, '3 and '4.

Counsel for Respondent has made the objection. I now call upon him to produce the report filed by Mr. Walter Slatter, Revenue Agent, on the assessment of this, showing payment of additional income taxes for the years 1942, 1943, and 1944. Then I can pursue this line of questioning, because [529] I have something very definite to establish. It is most important to this case.

The Court: Is this a report that was given to the taxpayer at the time?

Mr. Simpson: A statement of additional income taxes due. The original report, I presume, is on file with the Commissioner of Internal Revenue.

(Testimony of Rose Goldstein.)

The Court: Is there a copy of the report given to the taxpayer at the time?

Mr. Gardner: I believe it was, your Honor.

The Court: Have you seen it, Mr. Simpson?

Mr. Simpson: I have some correspondence indicating that there was a report submitted in connection with that. I have seen an entry made of \$20,000 for 1942, '3 and '4, prepared by Mr. Walter Slatter. I have attempted to locate Mr. Slatter, and he is out of the city for this week.

The Court: I don't quite understand what the purpose of your line of inquiry is.

Mr. Simpson: The purpose is this——

The Court: With this witness.

Mr. Simpson: Yes. This witness had the books and records during that examination of 1942, '3 and '4, income tax liability, to which there was an assessment made, and paid by Mr. Rau. [530]

Now, she had the books and records, and consulted with Mr. Slatter. She must have at that time exhibited to him these sheets for the French Cafe, showing the system followed for those three years, for which he was conducting his examination.

The Court: You can follow that line of inquiry, whether you have the agent's report or not. How is the agent's report going to assist you in that?

Mr. Simpson: Because it would show the adjustments made to his income, and the basis for it.

The Court: Do you have a copy of the report, Mr. Gardner?

(Testimony of Rose Goldstein.)

Mr. Gardner: I have seen a copy of that report. I don't know if I have one here, your Honor.

The Court: If you have it, I suggest you make it available to Petitioner's Counsel.

Mr. Gardner: I have here what is apparently the original report of Walter J. Slatter, dated December 23, 1947, relating to tax liabilities for the years 1943 and 1944, as well as the year 1942.

Mr. Simpson: I would like to inquire of Counsel whether or not this is a complete report. I know it is customary that an agent will sometimes write a narrative, setting forth the persons with whom he has discussed these adjustments, and if there is any information in the possession [531] of the Commissioner, as to the persons with whom these adjustments were discussed.

I would like to have that, too, because it may show that they were discussed with this bookkeeper at the time he made his examination.

Mr. Gardner: If the Court please, he has in his hands now the copy that was furnished to the taxpayer at that time, and I would object very much to furnishing him with confidential information, or confidential report of the agent, any confidential communication he might make to his group chief.

If he wants to get the agent here, he can get him here and he can testify.

The Court: Were you handed at the time—will you hand Petitioner's Counsel a complete copy of the revenue agent's report that was delivered to the taxpayer?

(Testimony of Rose Goldstein.)

Mr. Gardner: That is my understanding, and that was my intention, your Honor, to give him everything that was given to the taxpayer.

The Court: Mr. Simpson, has that now in his hands.

Mr. Gardner: Yes, your Honor.

The Court: Proceed, Mr. Simpson.

Mr. Simpson: Do you want this Petitioner's Exhibit—would you mark this Petitioner's Exhibit marked for identification? [532]

The Clerk: Petitioner's Exhibit 27 marked for identification.

(The document above referred to was marked
Petitioner's Exhibit No. 27 for identification.)

Q. (By Mr. Simpson): Miss Goldstein, I want to show to you Petitioner's Exhibit 27 for identification, which is a report of adjustments made to Mr. Rau's income tax liabilities for the years 1942, 1943, and 1944. It has the name, Examining Officer, Walter Slatter, bearing date December 23, 1947; name of the taxpayer, Walter F. Rau, Sr., and ask you if that during the time that you were book-keeper that you ever received a review or report submitted to Mr. Rau in connection with the adjustments to his income tax liabilities for these years, similar in nature, or identical, if you will, with this exhibit?

Now, take a look at that.

A. I don't recall this, and I don't know whether any money was paid to the Collector of Internal

(Testimony of Rose Goldstein.)

Revenue, because I wasn't with Mr. Rau in December of '47.

Mr. Simpson: If your Honor please, at this time, I would like to offer into evidence Petitioner's Exhibit 27, being the report of adjustment to Mr. Rau's income tax liability for 1942, 1943 and 1944.

The Court: For what purpose? [533]

Mr. Simpson: To establish that adjustment was made in the amounts and for the years as indicated in the report.

The Court: Made or proposed?

Mr. Simpson: Made.

The Court: What bearing does that have upon the issues before us?

Mr. Simpson: The bearing that it has, as far as we are concerned, is that the records which this witness has testified to, as well as Mr. Webb, will not coincide with the report made by the revenue agents at that time.

Otherwise, having these records, this adjustment could not have been made, your Honor. It must have included the figures that we see on these daily sheets of the French Cafe totaling much more, far more than the adjustments actually made.

I would like to establish that, perhaps.

The Court: It is on the assumption that the revenue agent made his audit upon the basis of those sheets, or that the sheets were available to him?

Mr. Simpson: Part of the records of the taxpayer, yes, your Honor, that is true. It must be

(Testimony of Rose Goldstein.)

assumed that he had performed his job, or his work in a proper manner, and that he did examine them.

The Court: You say so, but your statement that he did so isn't evidence. [534]

Mr. Simpson: But I assume when he made the examination it was done in the proper manner.

The Court: I can't make any such assumption at all, because if these sheets contain evidence of falsification, I can't assume for one moment that the taxpayer made such falsified sheets available to the—who was examining the matter. I can't make any such assumption as that.

I will admit your exhibit, if you can make anything out of it. I will let you try to do so, but I am stating now that it doesn't appear to prove anything to me at all.

Mr. Simpson: Well, in that connection then, certainly request permission to keep the record open until I can have Mr. Slatter in for purpose of taking his deposition, or having him in here, when he returns. No way for me to get him now, and then I can establish it, your Honor. It is very important to this petitioner's case.

We feel that a grave injustice may occur unless we are able to establish it.

Mr. Gardner: May I be heard, your Honor?

The Court: You may.

Mr. Gardner: This report to which we are referring now was prepared sometime ago. It has been known to petitioners for a long time. If they intended to have him here, intended to go into this

(Testimony of Rose Goldstein.)

matter, they could have had him for the trial now. [535]

I object to the introduction of this document, on the grounds that it is completely immaterial. There has been no showing here that it ties into anything in this case.

Further, the fact is that this revenue agent, former revenue agent, Slatter, could have been subpoenaed. This is not something new. This trial could continue indefinitely, and I object strongly to the record being kept open and left open to obtain the testimony of revenue agent Slatter.

Mr. Simpson: May I be heard now, your Honor?

Of course, I think it was natural for me to assume that this person who was a bookkeeper, being present at the time this audit was being made, would have had knowledge of the fact that he was there, making the audit, and that these assessments had been made. I did not realize that she would say she doesn't remember.

The Court: I am not satisfied, Mr. Simpson, with the bona fides of your statement. If the agent saw these sheets, the agent was the man from whom to get that information. The notice of trial in this case was sent out, according to the records before me, on March 13 of this year, and the agent, himself, would be the most direct source to the evidence as to whether such sheets were made available to him. [536]

This witness testified that she was no longer working for Mr. Rau at the time this agent's re-

(Testimony of Rose Goldstein.)

port was prepared. At the very best, you could get only indirect evidence from this witness. The most direct evidence would be from the agent.

And there has got to be some kind of orderly conduct in the trial of the lawsuit. It is up to counsel to present their evidence and present it at the time the case is called for trial. If some new and unsuspected development had arisen during the course of the trial, that would justify keeping the record open.

I think if justice required it, I would keep it open, but in my judgment, no new and unsuspected development has occurred. In my judgment, the matter for which you ask me to keep the record open is a matter that plainly should have been anticipated at the time the case was being prepared for trial.

Deposition, at best, is not a satisfactory way of presenting evidence to a court. It has to be resorted to at times, because there is no better way of handling the matter. But the Court is now in session. It is prepared to receive such evidence as the parties have to present in the lawsuit.

I will not keep the record open beyond the period that the Court is in session in Los Angeles. Now, I do expect [537] this present session to last for some, at least for some three or four weeks beyond today, and I will keep the record open up to the end of this session, and if you can bring in the witness, bring in Mr. Slatter, or whatever his name

(Testimony of Rose Goldstein.)

is, during the period that the Court is in session, I will receive his testimony, but not beyond that.

Mr. Simpson: All right, your Honor. Thank you.

Only one observation, I question the good faith of my statement. I would like to say something in my regard.

Being a bookkeeper, I did assume, and I think rightly so, that she would have knowledge of this examination which I know was conducted prior to the time he submitted his report. It had to be in December of 1947, and for that reason, I assumed that this witness would be familiar with that audit and examination, and not believe at that time that she would not recall it.

And I honestly believe that she would have testified with respect to that audit, and I made those representations in good faith.

Q. (By Mr. Simpson): Now, Miss Goldstein, as far as you are concerned, you have no knowledge of an audit that was made by Mr. Slatter—get that in the record—while you were working for Mr. Rau? A. Yes, sir. [538]

Q. Mr. Slatter never discussed this with you?

A. I don't recall it.

Q. With respect to the cash, itself, you never saw Mr. Rau put the cash in his pocket that was taken off and put down on a table in the lobby?

A. Not to my knowledge, because I made a record on that slip of paper each day, and the amount held out and put it in his key, where he kept his key of his room. What he did with that,

(Testimony of Rose Goldstein.)

whether he put it in the envelope, or whether he put it in his pocket, I do not know.

Q. Then you do not know what happened to the cash after you saw him take it at the table?

A. No, sir.

Q. You have given considerable testimony and a great deal has been stipulated with respect to the manner in which purchases, cash purchases particularly, had been entered in the books and records.

You testified that you made those entries based on information given to you, particularly as it relates to the French Cafe on the daily sheets that you recorded that information.

You have also given testimony with respect to the automatic increasing of purchases for the years 1943, and 1944, on the face of the return.

Is it your testimony that Mr. Rau instructed you [539] to raise the purchases in that amount when you prepared the return? A. Yes, sir.

Q. In each case? A. Yes, sir.

Q. Each year? A. Yes, sir.

Q. You did that for 1944? A. Yes, sir.

Q. And for 1943? A. Yes, sir.

Q. Now, as a bookkeeper, what effect does that have on inventories at the end of each one of those years?

A. There was no inventory kept for the French Cafe, or the hotel, and inventory on the Southern Wine and Liquor. Whether inventory was on the Southern Wine and Liquor Company, Southern Wine and Liquor Company—

(Testimony of Rose Goldstein.)

Q. I don't believe I quite follow that answer. It doesn't make any difference on the Southern Wine and Liquor.

A. I said, no inventory was ever kept for the French Cafe, and there was inventory kept on the Southern Wine and Liquor.

Q. When you prepared the returns for each of the years 1942 to 1946, Mr. Rau came downstairs, did he, to the front desk, or did he go to your office, your desk space? [540]

A. No, he never came to my desk space at all.

Q. Well, he was at the office in the lobby?

A. Yes, sir.

Q. And Mr. Webb was there, and he saw the returns that were being prepared and signed by Mr. Rau?

A. When I presented them to Mr. Rau, for my records, for my books, Mr. Rau would check the figures. I told him the amount of tax he had to pay, and he said to raise the purchases, or any other expenses, so we wouldn't have that amount of tax to pay, or very little to pay.

And I did it on his orders, and I told him then, "Mr. Rau, pay the tax, but you will have to pay without raising your supplies and so forth."

Q. And Mr. Webb was there, and he heard the comments?

A. Mr. Webb was right there at the time, every time I brought those figures to Mr. Rau.

Q. He knew what went in the income tax returns each time?

A. Yes, sir.

(Testimony of Rose Goldstein.)

Q. Now, I think you testified that you devoted very little of your time to keeping of the books, making any audits, because you are devoting most of your time to your other business?

A. Yes, sir. The only book work I did was post the checks, which didn't take me long. I advised Mr. Rau [541] to have the books audited and he says, "No," to go ahead the way I had been doing.

Q. Well, did he have to have someone audit books when he had you?

A. Well, as a rule, people usually have their books audited even if they do have a bookkeeper.

Q. Were you not able to make the audit, yourself? A. I didn't want to.

Q. You didn't want to make the audit?

A. No. I would rather have an outside auditor to do it.

Q. So, each day that you saw these records coming in, knowing them to be false, you then put down those entries knowing them to be false, and recorded them as receipts?

A. According to Mr. Rau's instructions.

Q. And the same thing holds true with the income tax returns, themselves, when it came time to increase the purchases you did that, too, yourself, with your own pen or pencil?

A. On the orders of Mr. Rau.

Q. But you did it, yourself? A. Yes, sir.

Q. Then you signed those returns or at least one of them, I believe——

A. Here is one here, your Honor. [542]

(Testimony of Rose Goldstein.)

Q. Miss Goldstein, I show you Exhibit 3E, being the 1943 income tax return of Walter F. Rau, Sr., and ask if that is your signature as manager, or person who prepared the return? A. That is.

Q. Now, when you prepared that, and signed your name, you knew that it was false?

A. Yes, sir.

Q. And you were operating a separate business all of your own at that time, and deliberately, knowingly, knowing them to be false, signed it?

A. Yes, sir.

Q. Whenever there was anything that was wrong about the books and records that you kept, or about the income tax returns, you never failed to discuss it with Mr. Rau?

A. I did during the years from 1942 or '3, up until the time I was taking care of the books, I told Mr. Rau.

Q. And those discussions were held——

A. In the office of the Southern Hotel.

Q. Did anyone else hear those discussions, other than you or Mr. Webb?

A. Not that I know of. Because it wasn't for anybody else to hear.

Q. And it was a secret between you? [543]

A. Well, it wasn't exactly secret. I thought that was a personal matter between the employer and the employees.

Q. Now, it is true that you had your own separate business, prepared a return, you knew to be false, you signed it knowing it to be false.

(Testimony of Rose Goldstein.)

Did you work on Saturdays, Sundays and holidays? A. Yes, sir.

Q. Was your business open on Saturdays, Sundays and holidays?

A. Sometimes it was open on Saturday. After a while, Mr. Rau had told me to move down to the hotel, and gave me a room, so I would be closer to the hotel, and then when I would be up in my room, they would call me down for notary or for a letter to write, which I would come down, whether it be on Saturday, Sundays, evenings, holidays, I don't know.

And during income tax, I worked night and day.

Q. Well, for how long a period of time would that be? A. During the income tax time?

Q. That would be first of the year up to the 15th of March?

A. Yes, sir. And the last two weeks I wouldn't have any sleep at all, wouldn't even go up to my room at all. [544]

Q. And were you making entries in the books during the income tax time, when you were working night and day?

A. Sometimes I would, on Sunday, if it wasn't busy on my work. See, the first part of income tax isn't very rush. It is the last two weeks, or possibly the last week, when there is a rush on income tax.

Q. You go under the name of Miss Goldstein, but you are married, are you not?

A. Yes, sir.

(Testimony of Rose Goldstein.)

Q. When were you married?

A. Married in July 22, 1942.

Q. Were you married in Bakersfield?

A. No. I was married in Pocatello, Idaho.

Q. What is your present married name?

A. Longway. L-o-n-g-w-a-y.

Q. Is that Mr. Jack Longway?

A. Yes, sir.

Q. Is Mr. Jack Longway, was he in the service prior to your marriage?

A. No, sir. He went in a month after we were married.

Q. A month after you were married?

A. Yes, sir.

Q. And then when did he leave the service?

A. 1945. [545]

Q. 1945? A. Yes, sir.

Q. Did you go into business with Mr. Longway after he came out of the service?

A. I still have my same business.

Q. You continued your separate business?

A. Yes, sir.

Q. Does your husband have a separate business apart from you?

A. Oh, after a year, or two, after he came back from the service.

Q. And what kind of business does he have?

A. That was a cafe business.

Q. Did he buy that business?

A. He got it for a small amount of money, as it was a rundown business, and he took it over.

(Testimony of Rose Goldstein.)

Q. Do you know how much it cost him?

A. I don't know. He handled that himself.

Q. Did it come a time when you and your husband bought a home?

A. After he come out of the service, we got a—he got a G. I. loan.

Q. Did you pay for it?

A. We were making monthly payments on it.

Q. How much did you pay down on the home? [546]

A. I can't recall that. He handled all that himself.

Q. What year did you buy your home?

A. I can't recall that either; might have been in 1946 or '47, I can't say.

Q. Can you state whether or not you made the down payment, yourself, at this time?

A. No, sir.

Q. Can you state whether or not your husband made that down payment?

A. I don't recall where the down payment was made, or when it was made; whether I was with him when it was made, or not, I can't say.

Q. What is the title that you have to the house, is it in your name?

A. It is in both our names, as joint tenants.

Q. Joint tenants? A. Yes, sir.

Q. If you paid for that, would you recall drawing a check to your account in payment for that home?

A. I had a savings account of all his money

(Testimony of Rose Goldstein.)

that he sent me on this, what they sent to the wives. I put it in a savings account. I also received some bonds from my uncle that died.

Q. How much did that amount to?

A. The amount of the bonds is \$1,350. And it was [547] in my maiden name. I went to the Bank of America and I think Mr. Cash from the Bank of America, I think he was in that department at that time. I am not sure.

Q. When did you cash the bonds?

A. When my husband came home and he wanted to have some money. He needed for the business and the home, and he also had \$5,000 worth of bonds, himself.

Q. He had \$5,000 worth of bonds?

A. Yes, sir.

Q. Do you know when he bought them?

A. No, I do not. Because I was only married to him one month before he went into the service, so I didn't know anything of his personal affairs.

Q. And you bought your home, did you pay currency as a down payment, or did you issue a check?

A. I don't remember whether it was currency or whether it was out of the savings account, that money was taken, I can't recall. Been a long time ago.

Q. Other than your home, do you own any other property in and around Bakersfield?

A. Yes. We have a home on 30th Street.

Q. Except for your home, do you own anything else?

A. Yes, sir. No, sir.

(Testimony of Rose Goldstein.)

Q. Do you own any unimproved lots?

A. The one next to the home we are at now. [548]

Q. How much did you pay for that?

A. \$900.

Q. Do you know when you purchased it?

A. I can't recall that. It would be on record.

Q. Do you have an interest in any business in Bakersfield?

A. My husband has a wholesale business.

Q. What kind of a wholesale business?

A. Groceries.

Q. When did he get into that?

A. Well, while he still had the restaurant business, he went in partners with another fellow.

Q. Was he in one restaurant business, only one?

A. No, sir, he had two.

Q. He had two? A. Yes, sir.

Q. Do you know their names?

A. One was the Melody Cafe on 99th Highway; the other was the Coffee Cup on 99th Highway.

Q. And also he had an interest in wholesale grocery? A. Tejon Wholesale Groceries.

Q. Tejon? A. T-e-j-o-n.

Q. Was any of the money used out of what you had saved for him to go into those three businesses? [549]

A. Yes, sir. Because I didn't have much expense at all, and I put that money in my savings.

Q. And then——

The Court: What money?

The Witness: What I would make in my busi-

(Testimony of Rose Goldstein.)

ness, and then my bond money, and the money he sent me while he was in the service, allotment checks, that is what it was.

Q. (By Mr. Simpson): What was his rating in the service?

A. When he went in, he went in as a third-class cook. When he came out, he came out commissary steward.

Q. Commissary steward? A. Yes, sir.

Q. Do you recall now approximately how much allotment checks would amount to per month?

A. Sometimes \$40, sometimes \$50 a month, all depends on how much he received.

Q. And for how many years was he in the service? A. From 1942 up till 1945.

Q. He was in for three years?

A. Approximately three years, or three and a half, I am not sure.

Q. He sent home approximately \$480 a year?

A. He would, and then he would send me more home, outside of the allotment checks. [550]

Q. In addition to that, he was sending you more money? A. Yes, sir.

Q. I think, as a matter of simple arithmetic, he sent during that three year period \$1440 to you?

A. He might have; yes, sir.

Q. Is it your testimony he also saved other money out of that so that when he came out of the service he had \$5,000?

A. Out of what money?

Q. Out of what he received in his pay?

(Testimony of Rose Goldstein.)

A. Whatever money I put in the savings bank, I kept it there for him, which I felt was his money, not mine.

Q. But didn't you state, Miss Goldstein, that he had \$5,000 of his own money?

A. \$5,000 in bonds.

Q. That is his money, though?

A. Well, it was in bonds.

The Court: Was that in addition to what was in the savings bank?

The Witness: Yes, sir; yes, sir.

Q. (By Mr. Simpson): In addition to that?

A. Then he had a thousand or maybe \$1100 currency when we got a safe deposit box. [551]

Q. Where is the safety deposit box?

A. At the Bank of America.

Q. Did you both have authority to go in that safety deposit box? A. Yes, sir, we did.

Q. I ask what did you keep in that safety deposit box?

A. Just insurance policies, and stubs of money that he sent home to his mother.

Q. Did you keep any cash in that safety deposit box?

A. Only that money I told you about.

Q. Miss Goldstein, can you state now approximately how much income you reported in 1946?

A. Not unless I have my records.

Q. Can you state how much you reported in 1947?

(Testimony of Rose Goldstein.)

A. I was in the hospital in '46. That is when my accident was, in '46.

Q. What accident was that Miss Goldstein?

A. In an elevator, went down, and I was in it and broke both my legs.

Q. In 1946? A. Yes, sir.

Q. What month was that? A. July. [552]

Q. July? A. 24, 1946.

Mr. Gardner: May I interrupt. I think we have some confusion here.

As I understood it, your elevator accident took place in 1956; is that correct?

The Witness: I beg your pardon, '56, yes. Excuse me.

Q. (By Mr. Simpson): In 1946, Miss Goldstein what was the income that you reported, approximately?

A. I couldn't recall now. I would have to see my records.

Q. Was it as much as \$10,000?

A. I can't say.

Q. Have you ever reported during 1942 to 1947, as much income as \$10,000 a year?

A. I can't say, unless I saw the records, how much I reported.

Q. You cannot recall how much you reported?

A. No, sir.

Q. On your own income tax return?

A. No, sir.

Q. Did you prepare your own return, Miss Goldstein? A. No, sir.

(Testimony of Rose Goldstein.)

Q. Who prepared it for you? [553]

A. I had Mr. Higby prepare it, and I had Mr. Ensign that worked for D. L. Pratt, and Mr. Pratt.

Q. Now then, you were a tax expert but you permitted, you had somebody else prepare your own returns? A. Yes, sir.

Q. Was that true for 1942?

A. I can't recall whether I did it or somebody else, outside those three.

Q. Did you ever prepare your own income tax return for any of the years from 1942 through 1947?

A. I would have to see the records on that.

Q. Isn't—you cannot recall whether or not you prepared your own return? A. No, sir.

Q. Further, it is your testimony that you do not remember how much you reported as income during any of those years, 1942 to 1947, inclusive?

A. Not unless I saw the records.

Q. Miss Goldstein, do you have a bank account?

A. Yes, sir.

Q. Where do you have it?

A. I have a checking account in the Bank of America.

Q. Is that your personal bank account?

A. I have a personal bank account. I have a business bank account, and I have for my rentals, a bank [554] account.

Q. Let's identify the years, specific, in 1942, did you have a personal bank account in the Bank of America?

(Testimony of Rose Goldstein.)

A. I don't remember when I first took out my checking account at the Bank of America. I don't remember when I started.

Q. Did you have one in 1943?

A. I don't remember that either.

Q. Did you have one in 1944?

A. I don't remember that either.

Q. Did you have one in 1945?

A. I don't remember that either.

Q. Did you have one in 1946?

A. I don't remember that either.

Q. Did you have one in 1947? A. I did.

Q. Did you have a personal bank account in 1947 in the Bank of America? A. Yes, sir.

Q. Did you have a business bank account?

A. Yes, sir.

Q. How do you distinguish between those two bank accounts?

A. My business would be Rose Goldstein, trustee, Rose Longway, agent, and my business—I mean, my business [555] would be Rose Goldstein, trustee; my personal would be Rose Goldstein, agent; and my rentals—I mean, Rose Longway, agent; and my rentals would be Rose Longway, trustee.

Q. You said them so fast, I couldn't quite follow you. Would the Rose Longway, agent, be the personal account? A. Yes, sir.

The Court: Off the record.

There will be a short recess.

(Short recess.)

(Testimony of Rose Goldstein.)

Mr. Simpson: Would you mark this, these sheets for identification as Petitioner's next in order?

The Clerk: Petitioner's Exhibit No. 28 marked for identification.

(The document above referred to was marked Petitioner's Exhibit No. 28 for identification.)

Q. (By Mr. Simpson): Miss Goldstein, I show you Petitioner's Exhibit 28 for identification, being the bank account that you testified to and name of Rose Longway, agent, Bank of America, and ask you to look at that, please, if you will? A. Yes.

Q. That is the bank statement for the calendar year 1947. Will you see, yourself, as to that, please?

A. Yes, sir.

Q. Now, I call your attention specifically to two deposits [556] in the amount of \$1500 on August 8, 1947, and also to one of September 19, 1947, in the amount of \$2,209.55, and ask if you can identify the source of those two deposits?

A. From my income tax service, where I draw it out of my business to put in that, or I divide so much of my business and so much of my personal, so I would have something to work on.

Q. This came from——

A. Income tax service.

Q. Income tax service? A. Yes, sir.

Q. You prepared returns during the tax period from January up to March 15 of the year?

A. In '47, we went to April 15.

Q. Well, these deposits are in, both in August

(Testimony of Rose Goldstein.)

and September. A. Yes, sir.

Q. Now, I ask you whether or not did you hold those receipts that you received for income tax service in April until September before you deposited them into your bank account?

A. Yes. I made duplicate deposit slips out of every deposit I made, and then when I drew out any money, I drew it out of my business and put it into my personal.

Q. These deposits were first put into your business [557] account?

A. Drawing out and put into my personal account.

Q. Into your personal account?

A. Yes, sir.

Q. Now, I call your attention to a deposit on March 29 of 1947, in the amount of \$1,902.28, and ask if you can identify or explain the source of those funds?

A. The same thing, same amounts. Now, whether I put that amount in before putting it in my business, or just making a deposit to put to my personal account—that is the only way I would for any personal account, my personal account.

Q. So, a deposit that was made on March 29 of '47, you deposited directly to your personal account?

A. I think so. I am not sure whether I took it out of my business, and put in that, or whether I did it direct to my—

Q. May I call attention to deposit of March 4, 1947, amount of \$500? A. Yes, sir.

(Testimony of Rose Goldstein.)

Q. And ask if you can identify and explain the source of those funds? A. Yes, sir.

Mr. Simpson: If your Honor please, at this time, I would like to offer in evidence the bank statements just [558] identified by this witness.

Mr. Gardner: I would like to note an objection for the record, to the effect that this, at this point at least, the document desired to be introduced is immaterial on any issue in this case.

The Court: It will be admitted.

(The document heretofore marked for identification as Petitioner's Exhibit No. 28 was received in evidence.)

Mr. Simpson: Please mark a group of 13 sheets as Petitioner's Exhibit for identification next in order.

The Clerk: Petitioner's Exhibit No. 29 marked for identification.

(The documents above referred to were marked Petitioner's Exhibit No. 29 for identification.)

Q. (By Mr. Simpson): Miss Goldstein, I show you Petitioner's Exhibit 29 for identification, in the—being bank statement of Rose Longway, your personal account in the Bank of America for the year 1946, would you examine that and satisfy yourself, that it covers the year 1946?

A. Yes, sir.

Q. Speak up so he can get it. A. Yes, sir.

(Testimony of Rose Goldstein.)

Q. Miss Goldstein, I call your attention to a deposit [559] in the amount of \$3,642.88, on the date of January 31, 1946, in the personal banking account in the Bank of America, and ask you to explain the source of those funds, if you will?

A. That is also from income tax service.

Q. From income tax service? A. Yes, sir.

Q. You deposited directly to your personal account?

A. I can't recall whether I took it from my business and put it in that, or whether directly.

Q. I direct your attention to deposit on April 2, 1946, in the amount of \$1,000, and ask you to explain the source of the funds for that deposit, if you will? A. Same thing.

Q. I direct your attention to the deposit on May 9, 1946, in the amount of \$1,150, and ask you to explain the source of that, those, if you can?

A. Same thing.

Q. Directing your attention to the deposit in the amount of \$800 on June 10, 1946, and ask you to explain the source of that? A. Same thing.

Q. From your business? A. Yes.

Q. Direct your attention to deposit on June 17, 1946, [560] in the amount of \$400 and ask you to explain the source of that deposit?

A. Same thing.

Q. From the business? A. Yes, sir.

Q. From your business? A. Yes, sir.

Q. Direct your attention to deposit of \$300 on August 6, 1946, and ask you to explain the source

(Testimony of Rose Goldstein.)

of that deposit? A. Same thing.

Q. Direct your attention to deposit of August 30, 1946, in the amount of \$240, and ask you to explain the source of that deposit?

A. I would take, if I didn't deposit all my income tax to the business, I would put it to my personal.

Q. I ask you to look at deposit on September 16 in the amount of \$512.79. A. Same thing.

Q. From your business? A. Yes, sir.

Q. Also on September 20, 1946, deposit in the amount of \$600? A. Yes, sir.

Q. Also from your business? [561]

A. Yes, sir.

Q. Deposit on October 14, 1946, in the amount of \$1,680, and ask you to explain the source of those funds? A. Same thing.

Mr. Simpson: If your Honor please, at this time I would like to offer in evidence the bank statements for the year 1946, just testified to by this witness.

Mr. Gardner: I would like to note for the record an objection to the introduction of this evidence, on the grounds that it is immaterial at this point.

The Court: Overruled. Admitted.

(The document heretofore marked for identification as Petitioner's Exhibit No. 29, was received in evidence.)

Mr. Simpson: Please mark the next sheets of eleven pages, as Petitioner's Exhibit next in order.

(Testimony of Rose Goldstein.)

The Clerk: Petitioner's Exhibit No. 30 for identification.

(The documents above referred to were marked Petitioner's Exhibit No. 30 for identification.)

Q. (By Mr. Simpson): Miss Goldstein, I hand you Petitioner's Exhibit 30 for identification, your bank account in your personal account in the Bank of America, for the year 1945, and ask [562] you to look at the sheets and satisfy yourself that it covers 1945? A. Yes, sir.

Q. It covers the year 1945? A. Yes, sir.

Q. I direct your attention to the deposit on May 17, 1945, in the amount of \$604, and ask you to explain the source of the funds?

A. Well, I don't remember now whether I had a Rose Goldstein, trustee, for my business on that day. If I did, I took it from my income tax and transferred it to my personal; on all those others, the same thing.

Q. Is it your testimony then, Miss Goldstein, that the rest of the deposits appearing in this exhibit for the calendar year 1945, all came from your business? A. Yes, sir.

Mr. Simpson: If your Honor please, at this time I wish to offer in evidence Petitioner's Exhibit 30 for identification, identified by the witness.

Mr. Gardner: Note for the record an objection to this exhibit at this time, on the grounds it is immaterial.

(Testimony of Rose Goldstein.)

The Court: It is admitted.

(The document heretofore marked for identification as Petitioner's Exhibit No. 30 was received in evidence.) [563]

Mr. Simpson: Please mark these 12 sheets as Petitioner's Exhibit next in order.

The Clerk: Petitioner's Exhibit 31 marked for identification.

(The documents above referred to were marked Petitioner's Exhibit No. 31 for identification.)

The Clerk: Petitioner's Exhibit No. 32 marked for identification.

(The document above referred to was marked Petitioner's Exhibit No. 32 for identification.)

Q. (By Mr. Simpson): Miss Goldstein, I hand you Petitioner's Exhibit 31 for identification, being the personal bank account in the Bank of America for 1944, consisting of 12 sheets, and ask you to examine it and satisfy yourself that it covers the calendar year 1944?

A. The same procedure was done on that also.

Q. I direct your attention to deposit in the amount of \$900 on July 11, 1944, and ask you if that was from your business? A. Yes, sir.

Q. Is it your testimony that the rest of the deposits appearing in this exhibit also came from your business? A. As far as I know, yes, sir.

(Testimony of Rose Goldstein.)

Mr. Simpson: If your Honor please, I offer in evidence [564] Petitioner's Exhibit 31 just testified to.

The Court: Admitted.

Mr. Gardner: I would like to note for the record the same objection to the previous exhibits.

The Court: The objection is overruled.

(The document heretofore marked for identification as Petitioner's Exhibit No. 31 was received in evidence.)

Q. (By Mr. Simpson): Miss Goldstein, I show you Petitioner's Exhibit 32 for identification, being your bank account in the Bank of America for the year 1943, and ask you to examine these 12 sheets, and satisfy yourself that they cover the year 1943?

A. It would be the same procedure.

Q. You are satisfied that they cover your personal bank account in the Bank of America for 1943, are you not? A. Yes, sir.

Q. I direct your attention to several deposits, first of which is \$946.10 dated March 9, 1943.

A. That would be from my income tax, same with that.

Q. And deposit of \$1297.23 on March 17?

A. Yes, sir.

Q. Deposit of \$468.30 on March 15? [565]

A. Yes, sir.

Q. Deposit of \$559.94 on September 23, 1943?

A. Yes, sir.

Mr. Simpson: Your Honor, I offer at the time

(Testimony of Rose Goldstein.)

Petitioner's Exhibit 32 just testified to by the witness.

Mr. Gardner: Same objection to this exhibit as previous, your Honor.

The Court: It will be admitted.

(The document heretofore marked Petitioner's Exhibit 32 for identification, was received in evidence.)

Q. (By Mr. Simpson): Miss Goldstein, you testified that your husband's name was Jack Longway?

A. Yes, sir.

Q. Was he ever a night clerk at the Southern Hotel? A. No, sir.

Q. Did he ever work at the Southern Hotel?

A. No, sir.

Q. Under the laws of the State of California, which is a community property law state, you have a vested interest in his bank account. I believe the Court can take judicial of that fact.

A. I had a what?

Q. A vested interest in your husband's bank account, [566] one-half of it belongs to you.

A. No, sir. He is the one that signs his own personal checks. I have nothing to do with it, if that is what you mean.

The Court: The Court realizes that California is a community property state. However, the Court also recognizes that in a community property state, there is such thing as separate property, and community property, and that there is a comprehensive

(Testimony of Rose Goldstein.)

set of laws to deal with what is community property and what is separate property.

Mr. Simpson: Miss Goldstein, then I am sorry. I didn't know whether you were through. Are you through?

The Court: Yes.

Q. (By Mr. Simpson): Miss Goldstein, are you familiar with the deposits that your husband has made in his personal bank account?

A. No, sir.

Q. Do you know where he maintains his personal bank account?

A. He used to have it—is it Security First National and the Bank of America.

Q. He had two bank accounts?

A. Before he transferred over to the Bank of America.

Q. And he had his personal bank account in the Bank [567] of America in Bakersfield, did he not?

A. Yes, sir.

Q. Did you ever make a deposit in his personal bank account?

A. He gave me the deposit slip with the money, and I, when I would make my deposit, I would deposit in his, and he would put it in his book, had nothing to do with mine.

Mr. Simpson: This is Petitioner's Exhibit next in order, consisting of 11 sheets.

The Clerk: Petitioner's Exhibit No. 33 marked for identification.

(Testimony of Rose Goldstein.)

(The document above referred to was marked
Petitioner's Exhibit No. 33 for identification.)

Q. (By Mr. Simpson): Miss Goldstein, I show you Petitioner's Exhibit 33 for identification, being the bank account of Jack Longway in the Bank of America for 1946. I ask you to examine it.

A. Your Honor, I cannot. I don't know anything about my husband's bank account.

Q. Well, you made deposits in that bank account? A. Yes.

Q. And I want to ask you if you can identify some of these deposits. [568]

A. I cannot, because I don't know which ones I would deposit, or which ones he did.

Q. I direct your attention to deposit of March 15, see if I can refresh your recollection.

A. I don't know anything about it.

Q. \$3,932.61, March 15, 1946, and ask if you can identify that deposit?

A. I can't; I can't identify any deposits.

Mr. Gardner: If the Court please, I am going to object to this line of questioning, regarding this document which relates to the bank account of one Jack Longway. We have had no identification of the statements, the document from which he is questioning, and further than that, the entire line of questioning is immaterial as to any issue involved in this case.

The Court: Counsel may interrogate.

Q. (By Mr. Simpson): Miss Goldstein, I want

(Testimony of Rose Goldstein.)

you to look at this bank statement, perhaps you can refresh your recollection.

There is a deposit \$500 on March 7, 1946, are you able to identify that deposit?

A. No, I can't identify any of those deposits.

Q. Are you able to identify deposit of \$500 on April 2? A. No, I cannot; no, sir. [569]

Q. Perhaps you can identify the deposit of \$500 on July 2, 1946? A. No, sir.

Q. Are you able to identify deposit of \$300 on July 6, 1946? A. No, sir.

Q. Can you identify deposit of \$300 on July 15, 1946? A. No, sir.

Q. Are you able to identify the deposit of \$400 on July 19? A. No, sir.

Q. You cannot identify any of the deposits in this account?

A. No, sir; no, sir, because I don't remember what deposits I did, which I made very few for him.

Mr. Simpson: If your Honor please, at this time I offer in evidence Petitioner's Exhibit 33 just testified to by the witness.

Mr. Gardner: If the Court please, I object to the introduction of this document. All it does is clutter up this record. We don't know whether that account represents a business account, a personal account. There has been no identification as to that account.

The witness was unable to identify it, and as it stands [570] now, it is just something sticking up here in space in orbit.

(Testimony of Rose Goldstein.)

The Court: Unless it can be tied into this case, more clearly than it has been up to this point, I regard it as inadmissible. You may reoffer it at a later time, if you have further foundation upon which to present it.

Mr. Simpson: If your Honor please, I believe that the foundation has been laid by Respondent, if you may hear me out, in that there has been considerable testimony here by the bookkeeper, Miss Goldstein, the present witness, as well as by the manager, Mr. Webb, to the effect that—and this is the basic theory under which the Government is directing its case—that there was a great, a large sum of money withheld in the form of cash.

This witness has testified that she has handled large sums of cash during Mr. Webb's absence, particularly on Saturdays, Sundays, and holidays, when there was as much as \$150 a day withheld.

Now, the last person known to the Petitioner to be this witness, or perhaps Mr. Webb, himself, and in order to trace the final resting place of the money which they said was withheld from the French Cafe, and Southern Wine and Liquor, the burden has been placed upon the Petitioner.

I would assume under that theory to disprove that [571] the Petitioner, himself, retained the funds; in order to refute that I think it has a legal and logical relevancy to the testimony already elicited by the Respondent's counsel from this witness, as well as from Mr. Webb.

Mr. Gardner: May I answer, your Honor?

(Testimony of Rose Goldstein.)

Relating to the moneys that are alleged to have gone to the Petitioner's decedent, Mr. Rau, there is in the stipulation of net worth, this net worth will show substantial understatements in each of the years '42, '43, '44 and '45; this money at least stuck to his fingers, because we have agreed to it.

Now, that is the quantity and the amount there; we allege further, of course, that the deficiency depends upon the specific item adjustment, but is supported, strongly corroborated by the net worth statement agreed to.

So, whether or not this witness got \$10—assuming she did—and I don't believe it for a minute, but assuming she did get \$10, that has nothing whatever to do with the income tax deficiencies being set up against Mr. Rau.

The Court: If any of the funds were diverted to this witness, I would think that that would have a bearing upon this case, and if counsel for Petitioner has any proper evidence to show that there has been any such diversion, I would admit such evidence. [572]

I am not admitting this exhibit, because I believe that it is too remote and that there has not been laid a sufficient foundation to show the circumstances of the evidence that has been presented thus far, that they, that this represents any diversion of funds to this Petitioner of Mr. Rau's moneys.

Mr. Simpson: May I be heard, your Honor?

I believe that the record will ultimately show, perhaps I may be able to tie this evidence in with

(Testimony of Rose Goldstein.)

that—I believe I should be given the opportunity to do so, in this respect, that the amounts that these witnesses had testified to, which are in excess of the amounts that now appear by way of the stipulated net worth, will, when considered in the light of all the evidence that can be adduced here, corresponds and almost, I would say approximate that which has been testified to as not being reported.

Now, if in the event I am unable to prove that, then I believe that the evidence should be stricken, and that I believe is right. But if I can tie in their testimony with their own personal and private affairs, as we have done with Mr. Rau, the Petitioner, then I think that I have tied in my evidence with theirs.

I would like to be permitted to pursue that, be permitted, admitted additionally if the amounts I have shown [573] her do approximate the amounts which they say was not reported. Stricken, if not.

Mr. Gardner: I have no objection to him tying it up with proper evidence. This I do not believe is proper evidence, and I reiterate my objection.

The Court: Are there any deposits appearing upon the proposed exhibits in addition to the ones that you have interrogated the witness, that you wish to rely upon?

Mr. Simpson: I don't believe I will state this for the record. I will, after I approach the bench.

The Court: You may state it for the record.

Mr. Simpson: There is another deposit of another employee who is absent.

(Testimony of Rose Goldstein.)

The Court: I am talking about this exhibit.

Mr. Simpson: This exhibit, yes, I have two more years in connection with this particular exhibit, years 19——

The Court: I am talking about this exhibit, it is not about other papers.

Mr. Simpson: No. This is the only deposits that I have in connection with this.

The Court: Are the ones that you interrogated the witness about; you interrogated the witness about?

Mr. Simpson: Deposit on the——

The Court: About specific deposits appearing on Exhibit 33 [574] for identification, are there any other deposits on Exhibit 33 for identification that you rely upon, apart from the ones that you inquired of the witness?

Mr. Simpson: Yes. I rely on all the deposits in that exhibit.

The Court: I regard this exhibit as very remote. The testimony has been that Mr. Longway, himself, was in business of one sort or another. He had affairs of his own, apart from this witness. The deposits are quite inconclusive.

Nevertheless, out of an abundance of caution, I will reverse my ruling and admit this exhibit for whatever it may be worth, and I will give Petitioner's counsel the opportunity to tie these particular figures in. If he does not tie them into this case, they will obviously be of no bearing upon the Court's decision to be rendered herein.

(Testimony of Rose Goldstein.)

(The document heretofore marked for identification as Petitioner's Exhibit No. 33, was received in evidence.)

Mr. Simpson: Mark these 12 sheets as Petitioner's Exhibit for identification next in order.

The Clerk: Petitioner's Exhibit No. 34 marked for identification.

(The documents above referred to were marked Petitioner's Exhibit No. 34 for identification.) [575]

Q. (By Mr. Simpson): Miss Goldstein, I hand you Petitioner's Exhibit 34 for identification, being the personal bank account of Jack Longway in the Bank of America for the year 1947, and ask you to examine it and see if you can determine whether or not you made any deposits that you referred to, that were made for your husband in that year?

A. I cannot testify to it.

Q. Do you know whether or not you made any deposits in here? A. No, sir.

Q. Did you make any or do you know?

A. I don't recall making any deposit for Mr. Longway. He took care of that all himself.

Mr. Simpson: If your Honor please, I offer into evidence Petitioner's Exhibit 34, identified by the witness, testified to by the witness.

Mr. Gardner: Same objection as to the previous document, your Honor.

(Testimony of Rose Goldstein.)

The Court: This one is even weaker than the previous one, since the witness cannot testify that she made any deposits during this year on behalf of her husband.

Nevertheless, I will admit it for the purpose of giving Petitioner's counsel the opportunity of tying it into this case. If he fails to do so, it will have no [576] effect upon the court's decision.

(The document heretofore marked for identification as Petitioner's Exhibit No. 34 was received in evidence.)

Mr. Gardner: Very well.

Mr. Simpson: Nine sheets as Petitioner's Exhibit next for identification, next in order.

The Clerk: Petitioner's Exhibit No. 35 marked for identification.

(The document above referred to was marked Petitioner's Exhibit No. 35 for identification.)

Q. (By Mr. Simpson): Miss Goldstein, I hand you Petitioner's Exhibit No. 35 for identification in the personal bank account of Jack Longway, your husband, for the year 1945, and ask you to examine this exhibit and state whether or not you can identify any of those deposits as having been made by you? A. I cannot.

Q. I wish to call your attention to, specifically, to deposit of \$4,700 on December 15, 1945.

A. I don't know of any, whether I have nothing to do with his deposits or his checking account.

(Testimony of Rose Goldstein.)

Mr. Simpson: Your Honor, I offer in evidence at this time Petitioner's Exhibit 35, just testified to by this [577] witness.

Mr. Gardner: Same objection as to the previous exhibit, your Honor.

The Court: I will admit it but I regard it as subject to the same infirmities that I indicated with respect to the preceding exhibit.

(The document heretofore marked for identification as Petitioner's Exhibit No. 35, was received in evidence.)

Mr. Simpson: Excuse me a minute, your Honor.

Q. (By Mr. Simpson): Miss Goldstein, have you ever operated a business with your husband?

A. What do you mean?

Q. To be more specific, have you operated or obtained a certificate of business from the officials of the City of Bakersfield?

A. My husband did.

Q. Did you?

A. No, sir, to my knowledge.

Q. Still a little bit more specific then, perhaps, do you have an interest in the Tejon Wholesale Grocers?

A. It is my husband's business. Naturally I am his wife, there would be an interest for the both of us.

Q. What I would like to find out from you, Miss Goldstein, is do you operate that business with your

(Testimony of Rose Goldstein.)

husband [578] as a partner? A. No, sir.

Q. In what capacity do you operate the business with your husband?

A. I took care of the books there, doing the posting up until the time of my accident. Then I haven't touched them since.

Q. At the time of your accident, when was that, 1956? A. '56, yes.

Q. Well, did you have an interest with your husband in a business known as the Tejon Grocers before 1956?

A. I didn't have an interest in it. He was the one that was operating it.

Q. Did you file a certificate of business under a fictitious name for operating that business?

A. He must have; it would be on record.

Q. Did you sign it with him?

A. I don't recall.

Mr. Simpson: May I have a moment, your Honor?

Q. (By Mr. Simpson): Miss Goldstein, did you ever buy an interest in a business with your husband? A. No, sir.

Q. At any time? [579] A. No, sir.

Mr. Simpson: I have no further questions, your Honor.

(Testimony of Rose Goldstein.)

Redirect Examination

By Mr. Gardner:

Q. Miss Goldstein, referring to the questions asked you by Petitioner's counsel, relating to the deposits to the bank account of Rose Longway, agent, that is Exhibits 28, 29, 30, 31 and 32, I believe you testified that that was from your—that the deposits came from your income tax; is that right?

A. Income tax, or other business income.

Q. Yes. Now, what other businesses did you have?

A. Well, my Notary, did mimeographing, or any money that I received so much on accounts that I was supposed to take care of.

Q. You had income from your work as a stenographer? A. Yes, sir.

Q. A public stenographer, too, did you not?

A. Yes, sir.

Q. Now, there was one other point mentioned, I believe you stated in answer to questions by Petitioner's counsel, Mr. Simpson, that the French Cafe had no inventories; do you recall that, Mrs. Goldstein?

A. Up until the time I advised Mr. Rau he better show an inventory, which he did for two years, and after that he dropped it. [580]

Q. What two years was that, Mrs. Goldstein?

A. I don't recall whether it was—unless I saw the records.

(Testimony of Rose Goldstein.)

Q. I hand you Exhibit 3E, the 1943 income tax return of Walter F. Rau, and turning to the schedule therein relating to the French Cafe, do you see an item marked inventory in that year?

A. Yes, sir.

Q. That is one of the years that you did set up an inventory; is that correct? A. Yes, sir.

Q. Where did you get the figures that you used there, Mrs. Goldstein?

A. Mr. Rau told me to take that. He would put in a figure of \$3500. He said with that that would consist of inventory at the beginning of the year.

Q. All right. You had no other verification of that? A. No, sir.

Q. Did he tell you the inventory to use at the end of the year? A. Yes, sir.

Q. Now, referring to Exhibit 4F, the income tax return of 1944 for Walter F. Rau, Sr., and turning to the schedule therein relating to the French Cafe, do you see any [581] inventory in that year?

A. No, sir.

Q. You did not use an inventory then that year, did you? A. No, sir.

Q. Referring to Exhibit 2D, the income tax return of Walter F. Rau for the year 1942, and turning to the schedule showing income from the French Cafe, did you find any inventory in that year?

A. No, sir.

Q. Then the inventories that you did set up in the income tax returns, when you set up, were set up at the insistence of Mr. Rau?

(Testimony of Rose Goldstein.)

A. I don't just get that.

Q. When you did set up an inventory like in the year 1943—— A. Yes.

Q. ——Mr. Rau told you what figure to put it; is that correct?

A. He was the one that gave me the figures.

Q. He is the one that gave you the figures?

A. Yes, sir.

Q. That is the only reason you included them in the income tax return? A. Yes, sir. [582]

Q. You didn't keep a regular inventory, did you? A. No, sir.

Mr. Gardner: No further questions, your Honor.

Mr. Simpson: No questions.

(Witness excused.)

Mr. Gardner: At this time I would like to offer in evidence Exhibit U.

Is there any objection, Mr. Simpson?

Mr. Simpson: No objection.

The Court: Admitted.

(The document heretofore marked for identification as Respondent's Exhibit U was received in evidence.)

Mr. Gardner: I would like to inquire as to whether or not all of Respondent's exhibits marked for identification are in evidence?

The Court: Mr. Clerk, can you help us out?

The Clerk: Yes, your Honor. They are all in evidence, all that have been marked.

Mr. Gardner: Respondent has no further witnesses, your Honor.

Mr. Simpson: I would like to call as my next witness Betty Dorsey. [583]

BETTY DORSEY

a witness called by and in behalf of the Petitioner herein, having been first duly sworn, was examined and testified as follows:

The Clerk: Would you be seated and state your name and your address, please?

The Witness: Betty Dorsey.

The Clerk: A little louder, please.

The Witness: Just a minute, till I get my breath.

The Clerk: All right.

The Witness: Betty Dorsey. 1107 Virginia Street, Bakersfield, California.

The Clerk: Thank you.

Direct Examination

By Mr. Simpson:

Q. You have stated your name and address, Miss Dorsey. Will you please state the—your business or occupation, please?

A. Well, I take care of sick and have been for good number of years.

And some people would say a housekeeper, but I say I am a practical nurse. The doctor says a practical nurse.

(Testimony of Betty Dorsey.)

Q. Practical nurse. Have you been a practical nurse in Bakersfield for a number of years? [584]

A. Yes, I have, sir.

Q. Miss Dorsey, I ask you whether or not the occasion ever arose when you were employed by Mr. Walter F. Rau, Sr., was a nurse for him?

A. That was the occupation I was supposed to be employed by.

Q. And were you employed by Mr. Walter F. Rau, Sr., as his nurse? A. Yes, sir.

Q. And can you place the year in which you began working for Mr. Rau?

A. I am going to be truthful about it. It was, I think in the latter part of '45, that I started to work, but what month I cannot tell you.

Q. But your recollection is around in the latter part of '45? A. Yes.

Q. Now, when you first went to work for Mr. Rau, would you please explain the circumstances, how it was that you did go to work for Mr. Rau, who called you?

A. Well, I don't know who called the rooming house where I was rooming, but when I came in on my day off from where I was working, the landlady said that Mr. Webb had been trying——

Q. Mr. Webb? [585]

A. From the Southern Hotel.

Mr. Gardner: If the Court please, I can't hear this witness.

The Court: Would you speak up, Miss Dorsey?

(Testimony of Betty Dorsey.)

The Witness: I am trying to speak up, your Honor. I am sorry.

Mr. Gardner: Thank you very much.

The Witness: When I came in on my day off, where I was rooming, the lady said a Mr. Webb from the Southern Hotel was trying to contact me.

Q. (By Mr. Simpson): Did he contact you?

A. No, he did not contact me at the rooming house, because I got ready and went up to the hotel.

Q. Who did you see when you came to the hotel?

A. I saw Mr. Webb.

Q. And what did he say to you?

A. I asked Mr. Webb what was wanted of me, and he said Mr. Rau wanted to see me, and—excuse me a minute—and I said, “Mr. Rau, what’s the matter?” And he said, “Well, he is ill.”

Q. That is fine. Now, he said that he was ill. Did you at that time then go up to see Mr. Rau on that occasion?

A. Yes, I did. [586]

Q. And was Mr. Rau in bed?

A. Well, Mr. Rau was sitting on the—Mr. Rau was sitting on the side of the bed. He was so large he was just sitting on the side of the bed. I don’t think he would walk from the way—in fact, I know he couldn’t walk.

Q. Now, you did have an opportunity to—strike that. I will phrase it this way.

When you began your employment as a practical nurse for Mr. Rau, did you stay at the hotel where he was?

A. Yes, sir.

(Testimony of Betty Dorsey.)

Q. Did you have a room next to his when you began working for him?

A. He had a suite of rooms there, of two.

Q. Two?

A. And at that time when I first started to work——

Q. Did you occupy the room adjoining his?

A. My—mine was the front room on the couch.

Q. You worked 24 hours a day, so to speak?

A. I was there 24 hours a day; yes, sir.

Q. You began your employment, as you recall, the latter part of 1945; did you remain with him up until the day of his death?

A. I certainly did; yes, sir.

Q. You did. Now, did you observe Mr. Rau's use of alcohol while you were working for him? [587]

A. Well, that was the trouble; yes, he was quite——

Q. He drank quite a bit, did he?

A. Yes, sir.

Q. And would you say that he was intoxicated or at least under the influence of alcohol most of the day that you attended him?

A. Yes, he drank quite some.

Q. Yes. Now, did you endeavor to wean him away from the use of alcohol to such excess, try to reduce the amount that he consumed?

A. I would try to govern it to the best of my ability.

Q. Now, the state of his physical health at that

(Testimony of Betty Dorsey.)

time, would you say was rather poor; did he have difficulty in getting around?

A. Well, he went to bed. He was in bed, couldn't get around when I first went to working for him.

Q. I see. Now, during the time that he was up in his room, did anyone bring any books and records up to him, and show them to him while you were there with Mr. Rau?

A. Not to my knowledge; no, sir.

Q. Not to your knowledge, you never saw anybody bring any books or records, or any cash register tapes up in the room and show them to Mr. Rau?

A. No, sir, not while I was in the room. [588]

Q. Did you ever see Mr. Rau examine and go through any books and records of his business?

A. No, sir.

Q. Do you know Mr. Robert Webb?

A. Yes, sir.

Q. What was his position at the Southern Hotel, if you know?

A. Well, I understood his position at the Southern Hotel was manager.

Q. Manager? A. Yes, sir.

Q. And did you observe the extent of his activities in the management, were they quite evident, prominent, that he was taking care of Mr. Rau's business for him, running the business I should say?

A. Well, someone had to run it, because Mr. Rau wasn't able to go down. So, I presume Mr. Webb was running it.

Q. Now, in connection with Mr. Rau's mental

(Testimony of Betty Dorsey.)

condition, as a lay person, would you say that Mr. Rau was mentally alert and sharp, keen minded?

A. Not at all times.

Q. Not at all times. Would you then say that he was rather unresponsive or even slow mentally?

Perhaps I can rephrase that question and put it to [589] you this way: in your observation of Mr. Rau, in the way he talked or responded to anything that you might say, or question raised, was he quick and alert? A. No, sir.

Q. Were his answers? A. No, sir.

Q. He was not? A. No, sir.

Q. Were there any occasions during which Mr. Rau would often weep or cry?

A. Well, if company would come, yes.

Q. If company would come?

A. Or lots of times when he would get to talking, he would cry.

The Court: What period of time are you now referring to?

The Witness: That is during when I first started to work. In fact, that continued on till he died.

The Court: Throughout 1946 and 1947?

A. Yes.

The Court: Or was this a condition that was prevalent only near the end of his life?

The Witness: No, that was during '45. In fact, from the first, when I first began to work for him.

Q. (By Mr. Simpson): [590] Now, Mrs. Dorsey, did you make close—no, strike that.

(Testimony of Betty Dorsey.)

Did you clean and straighten the rooms that were occupied by you and Mr. Rau?

A. Yes, sir, I did.

Q. Did you also send out Mr. Rau's personal clothing to the cleaners?

A. Yes. His clothes went to the laundry and his personal clothes would go to the cleaners.

Q. Did you empty his pockets of his clothes before you sent them to the laundry or to the cleaner?

A. Well, if there was anything in the pockets, I would have to take them out.

Q. You would have to take them out. On those occasions that you were doing that, did you ever remove any large sums of cash?

A. No, sir, that I did not.

The Court: Did he dress every day?

The Witness: No. When I first went to working for him, your Honor, he couldn't—in fact, I had to make clothes, he was so large, he was 56 inches and around, and so big that I couldn't put any—he couldn't, he had to make pajamas to cover him, you know. And he couldn't dress himself. He never did dress himself from the day I went to work for him until—— [591]

The Court: Was he dressed on most occasions?

The Witness: After about three weeks, he would be dressed and then he would come up and lay down with his clothes on.

The Court: Did he ever leave the room at the end of that three week period?

(Testimony of Betty Dorsey.)

The Witness: Well, at first I wheeled him in a wheel chair downstairs.

The Court: He did go downstairs?

The Witness: I would take him and put him in the wheel chair, and put him in the elevator and take him down in a wheel chair. Then I would let him sit there and I would go upstairs and straighten things up. Then about that time he would be ready to come up again.

The Court: And did that practice continue every day?

The Witness: I just don't understand you, sir.

The Court: Well, did he continue to go down every day in the wheel chair?

The Witness: Well, he didn't stay in the wheel chair very long. He was out of the wheel chair.

The Court: And walking around?

The Witness: And then——

The Court: Was he walking around?

The Witness: I would help him and teach him to get him walking, so he could straighten his legs to walk. Then [592] he would go downstairs by himself and back up.

The Court: Without a wheel chair?

The Witness: Yes, sir. But he wouldn't stay downstairs. He would go down and come back up.

Q. (By Mr. Simpson): As far as Mr. Rau's personal needs are concerned, were they, would you say they were very simple and unextravagant; he didn't require a great deal, did he, Mrs. Dorsey, very simple needs, himself, personally?

(Testimony of Betty Dorsey.)

A. No, he didn't require—you had to keep him clean.

Q. Yes. But I mean, his personal needs.

A. No.

Q. He wasn't extravagant, spend a lot of money, there were very simple needs? A. Yes.

Q. Now, this cleaning the room, did you ever discover any large amounts of cash or currency in his room? A. No, sir.

Q. Did you ever see any books and records around in his room?

A. No, sir; no, sir, that I did not.

Q. Now, did you go downstairs with him on some occasions when he went down in the lobby? [593]

A. Yes. I went.

Q. On those occasions, did you ever see him make any entries in any books in your presence?

A. No, because I wouldn't stay with him.

Q. Do you know Miss Rose Goldstein?

A. Yes, sir, I do.

Q. Do you know whether or not, from your own personal knowledge, while you were there, that she took an active part in the management of this business with Mr. Webb?

A. The only thing I can say to that is I took care of Mr. Rau, and as far as business is concerned, I paid no attention.

Q. You paid no real attention to that.

I have no further questions.

(Testimony of Betty Dorsey.)

Cross-Examination

By Mr. Gardner:

Q. Miss Dorsey, is it Miss or Mrs.?

A. Mrs. Dorsey.

Q. Mrs.? A. Yes, sir.

Q. Mrs. Dorsey, I believe you stated you were employed first by Mr. Rau in 1945; is that correct?

A. I think it was in the latter part of '45.

Q. In the latter part of '45? A. Yes. [594]

Q. And from the time that you were first employed by Mr. Rau, in the latter part of 1945, you stayed with him continuously up until the time he died; is that right? A. Yes, sir.

Q. Now, by staying with him continuously, do you mean that you were with him 24 hours a day?

A. Yes, sir.

Q. Twenty-four hours a day?

A. Yes, sir.

Q. Well now, I believe you testified that there were occasions when he would go downstairs in 1945 and you would be upstairs cleaning the room, you weren't with him continuously, were you?

A. Well, I was. I don't know what else, I was in the hotel that would, of course—of course, I wasn't by his side.

Q. You weren't by his side? A. Yes.

Q. In other words, he was doing what he wanted to do and you were doing what you wanted to do during the day? A. Yes.

(Testimony of Betty Dorsey.)

Q. When you first went there, as I understand it, he was rather ill at that time; is that right?

A. Very ill. [595]

Q. And what was his trouble?

A. Well, alcohol and no eats.

Q. Alcohol and no what?

A. And he wouldn't eat when he was drinking.

Q. And he wouldn't eat. Now, how long did it take you to clear up this condition?

Mr. Simpson: If your Honor please, I don't think there is any testimony on direct examination that she cleared up that condition.

Mr. Gardner: I believe she has testified that she tried to get him to quit drinking and there was testimony that, to that effect, Mr. Simpson.

The Witness: I don't know, it was all the time that I was with him, I would try and govern liquor.

Q. (By Mr. Gardner): How long was he sick in bed, Mrs. Dorsey?

A. That I cannot tell truthfully. You know what I mean, I can't tell you exactly, but I think it was three weeks.

Q. Three? A. Three weeks.

Q. Three weeks he remained in bed?

A. When he had to.

Q. How did he get his liquor when he was in bed, and you were with him all the time? [596]

A. I would have to go out and shop. He would use the phone and call up and get it.

Q. He would use the phone and call up and get it? A. Yes, phone was by his bed.

(Testimony of Betty Dorsey.)

Q. Phone was by his bed. Now, while you were out—by the way, how long did you go out and shop every day? A. Whatever time it took me.

Q. I didn't understand you.

A. Whatever time it took me.

Q. What time would it take?

A. I couldn't tell you that.

Q. Four hours?

A. Oh, no, wouldn't take me four hours.

Q. Take two hours?

A. No, I don't think I would be gone two hours at a time.

Q. How long would you be gone at a time, now, this is during the first period that you went to work for Mr. Rau?

A. Well, I wouldn't know what to say to you there, because I would go to the grocery store and I would get material to make clothes.

Q. What would you do at the grocery store, Mrs. Dorsey?

A. Well, I cooked his—I got to cooking his meals in the room. [597]

Q. You got to cooking his meals. Now, was that the understanding when you were hired that you would cook his meals in the room?

A. No, sir.

Q. When did that start?

A. Right after—well, right after he was up.

Q. Excuse me? A. Right after he got up.

Q. Right after he got up? A. Yes.

Q. Now, we are talking about the time that he

(Testimony of Betty Dorsey.)

was in bed; you said that you weren't there all the time and you would be out shopping.

Now, how long were you out shopping?

A. Well, as long as to get me to take—get some material to make him some clothes to wear.

Q. He didn't have any clothes when you were first hired?

A. He didn't have clothes, but they didn't fit him to suit me.

Q. How do you know whether they fit him to suit you, when he was in bed all the time? Did you dress him and put him in bed?

A. I made pajamas, sir.

Q. You mean pajamas? [598]

A. Yes, sir.

Q. You wanted to make him some pajamas; is that it? A. That is what I did, sir.

Q. I see. How long did you—do you estimate you were gone from his room on each day during the initial period that you were employed?

A. Not too long. I wouldn't tell you how long, because I don't know, but '45 is a long time back.

Q. Yes, it is. What I am trying to find out is how he could get this liquor up there and remain intoxicated when you were with him constantly.

Now, that is not possible, is it Miss Dorsey?

A. Yes, because he had a phone by his bed, and he could use his phone and have his liquor sent up.

Q. All right. And who would receive that liquor, would that be you?

A. No, because I wouldn't be in the room.

(Testimony of Betty Dorsey.)

Q. You wouldn't be there?

A. While I am out, he is getting his liquor.

Q. Now, were you out every day?

A. Yes. I went out every day.

Q. You went out every day? A. Yes, sir.

Q. How long would you be out? [599]

A. That I can't answer you.

Q. Now, is it possible that also the time you were out every day that Mr. Webb or Miss Goldstein came up and talked to him about the business?

A. Miss Goldstein never did come up. That is, Miss Goldstein did not come up in the room while I was there.

Q. Did Mr. Webb?

A. Yes, Mr. Webb did come up.

Q. Mr. Webb did come up? A. Yes.

Q. And he talked to him about the business?

A. I don't know what he talked about.

Q. Where were you?

A. I would go in the other room. That was not my concern.

Q. That was not your concern. But you do know that Mr. Webb did come up there, didn't he?

A. Yes.

Q. And could you state whether or not he was carrying anything at the times that he would come up?

A. Why, I never saw him have anything in his hands.

Q. You never saw him?

(Testimony of Betty Dorsey.)

A. I would see him come in the room, and then I would [600] step in the other room.

Q. You would see him but he could have had something in his hands; you didn't notice, did you, Mrs. Dorsey?

A. No. I would have noticed if he had something in his hand.

Q. You would have noticed? A. Yes.

Q. Is it your testimony that he never came up in his room while you were there with anything in his hands? A. Yes, sir.

Q. That is your testimony, isn't it? Now, you weren't there all the time, though, were you, Mrs. Dorsey? A. No, sir.

Q. And what he did during those times that you were not there, you cannot testify as to whether or not he came up and at that time discussed the books and records, can you? A. No.

Q. Now, you were gone each day of your employment from 1945 on, at some period of the day, weren't you, Mrs. Dorsey?

A. I would have to go out and get groceries.

Q. Of course. And you wouldn't want to stay in the hotel room or by his side all the time, would you?

A. Well, I was by his side practically all the time. [601] I even had to sleep where he could call me.

Q. Surely. Now, you say you taught him to walk again, and that was in 1945, wasn't it?

A. Yes, sir, when he got up out of bed.

(Testimony of Betty Dorsey.)

Q. You taught him how to walk again? Did he continue drinking?

A. Yes, sir.

Q. He continued drinking. And he was able to walk, though? A. Yes, sir.

Q. And he would go to the elevator and he would go downstairs, wouldn't he?

A. Yes, sir.

Q. And he would walk around downstairs, and you would be up?

A. I don't know what he did, walked around downstairs, or what he did out of my sight.

Q. You don't know, do you, but he would be gone for periods of time each day, wouldn't he?

A. Not very long at a time.

Q. Not very long at a time, but he would be gone?

A. He would be gone out of the room, but he wouldn't be gone long at a time.

Q. How long would he be gone, Mrs. Dorsey?

A. Oh, gosh. I never think of time. [602]

Q. I see. Time just doesn't—you don't nail things down by hours, or two hours, or—

A. No, sir. When you are working, taking care of sick, you cannot.

Q. I see. But in any event, every day Mr. Rau would go out to the elevator and go down and then he would walk around with this cane that he had, didn't he?

The Court: I instruct the witness to answer orally, rather than nodding her head.

(Testimony of Betty Dorsey.)

The Witness: I think I do nod my head when I talk.

The Court: The reporter cannot always see you nodding your head.

The Witness: Beg your pardon. I am trying to talk loud.

Mr. Gardner: I am sorry, your Honor.

Would you read the previous question, please?

(Question read.)

The Witness: Well, I knew he walked from the room to the elevator and outside of that I don't know anything about it, because I wasn't with him.

Q. (By Mr. Gardner): You weren't with him. In other words, he could have walked all over the place and you wouldn't have known it, would you?

A. As far as I am concerned. [603]

Q. Now, was he having trouble with his legs at this time?

A. Oh, yes. His legs were swollen so he couldn't sit down with him.

Q. They were swollen? A. Yes.

Q. He had difficulty in walking on them, in fact, didn't he? A. Yes, sir.

Q. If he became intoxicated, he couldn't walk on them at all, could he, Mrs. Dorsey?

A. Well, he would go up to his room and lay down.

Q. That is what he would do when he was fully intoxicated, wouldn't he? Now, I believe you have

(Testimony of Betty Dorsey.)

stated that when Mr. Webb came and discussed business, you left the room; is that right?

A. Well, I don't know if he came to discuss business or not. I don't know what he did.

Q. You don't know, but he was almost a daily visitor when Mr. Rau was confined to his room, wasn't he? A. Yes, sir.

Q. And that happened on all occasions when Mr. Rau was confined to his room, Mr. Webb would come up there and talk to him, wouldn't he?

A. He would come up there; yes, sir. [604]

Q. And you would leave, wouldn't you, because that was none of your business?

A. I wouldn't leave, but I went in the room, other room.

Q. You wouldn't, couldn't hear what they were talking about, could you? A. No, sir.

Q. Now, Mr. Simpson asked you whether or not Mr. Rau appeared to be sharp mentally, and you stated, I believe, not always. Would you clarify that answer, please?

A. Well, he would be kind of, I don't know just how to express it, but he wouldn't, he didn't seem to have any interest, or any—he would come to the room and lay down and that is it.

Q. Now, when he was sharp mentally, because as you stated not always, in some occasions when he was sharp mentally, wasn't he?

A. I would say not all the time that I was with him.

Q. But some of the time?

(Testimony of Betty Dorsey.)

A. No, he never was what I would call sharp.

Q. He never was what you would call sharp?

A. No, sir.

Q. Did you ever discuss any financial matters with Mr. Rau? [605]

A. No, sir.

Q. You never did. What did you discuss with Mr. Rau?

A. Oh, I don't know. What he would like to eat, or if I could fix him something to eat, or——

Q. Did you ever hear him discuss business with anyone else?

A. No, sir.

Q. You can't say whether or not he was mentally alert as to business, can you then?

A. Well, I don't think so.

Q. You cannot state that, can you? In fact, as far as you are concerned, and as far as you know, he could be very, very sharp mentally, couldn't he?

A. No, sir, he could not.

Q. Why was that now?

A. Because he didn't have the right, well I can't answer that either.

Q. You can't answer it, can you?

Now, he was making a substantial income during this period, wasn't he, Mrs. Dorsey?

A. As far as I know, I don't know anything about his income.

Mr. Simpson: The witness testified she doesn't know anything about his business transactions. That wasn't even covered on direct examination [606] either.

Mr. Gardner: That is what we are concerned

(Testimony of Betty Dorsey.)

with here, and I believe her testimony relates to mental capacity, mental capacity relating to business.

If we stipulate that she knows nothing of his mental capacity as to business matters, I am very happy.

Mr. Simpson: I am objecting to the question, not to be drawn into a stipulation of that nature, but because it goes beyond the scope of the direct. She has already said that she did not discuss business or his finances with him.

The Court: The witness answered that she didn't know. You may proceed.

Mr. Gardner: Thank you.

Q. (By Mr. Gardner): Now, the only time actually that he was confined to his room in 1945 was the initial period that you were there? Is that correct, Mrs. Dorsey?

A. I was there with him all the time in '45, but the first three weeks he was confined to his bed.

Q. He was confined to his bed then, and after that, he was not confined to his bed; is that right?

A. Well, he was in bed most of the time.

Q. Well now, did he get up and did he walk around?

A. He would get up and walk around some, but not much. [607]

Q. Would he go downstairs?

A. I answered that, yes, sir.

Q. Yes, sir, he would. Now, did that continue throughout the year, the remainder of the year '45?

(Testimony of Betty Dorsey.)

A. Yes, sir.

Q. And did it continue throughout the year 1946?

A. In '46, I think that it was that he moved out to his home and I went out there with him.

Q. And when about was that in 1946?

A. I will not try to say, but I think it was in the spring of the year.

Q. Spring of the year of 1946?

A. Yes, sir.

Q. Now, when you went out to his home, did Mr. Rau make a practice of coming to the Southern Hotel daily?

A. Well, I wouldn't say daily, but I did take him up to the Southern Hotel. I would have to help him in and out of the car, to get him up there.

Q. And when he got out, did he walk with the aid of his cane? A. Yes, sir.

Q. And he was a big man, now, wasn't he?

A. He was 230 pounds.

Q. 230 pounds. Now, if he was thoroughly intoxicated, you couldn't possibly carry 230 pounds, could you, Mrs. Dorsey? [608]

A. I couldn't carry it, but I lifted it.

Q. You could lift it? A. At that time.

Q. I see. Did you ever have to lift him?

A. Yes, sir.

Q. When he was intoxicated in and out of the car? A. Because when he was sick—

Q. Just when he was sick?

A. When he was sick and from liquor.

(Testimony of Betty Dorsey.)

Q. But he would be lying in bed, is that the idea, Mrs. Dorsey?

A. Well, he never did stay up any length of time. He would get up and go to bed and then you would get him up and get him in bed, and then he would want to get up. And I used to take him under the armpits and lift him in his chair, and back in his bed.

Q. I see.

The Court: After he moved to his house in 1946, how often did he come down to the hotel?

The Witness: Well——

The Court: Was it nearly every day?

The Witness: Well, say nearly every day.

Mr. Gardner: Thank you.

Q. (By Mr. Gardner): And why did you come down to the hotel, Mrs. Dorsey? [609]

A. Well, to get him out of the house, to give him a ride.

Q. Did he request it?

A. Well, he would want to go some place.

Q. He wanted to go to the hotel?

A. And he would want to go down and look at the hotel. It wouldn't be there long.

Q. But he did want to go down there and look it over? A. I don't know but he would go down.

Q. That is the reason you went to the hotel, because Mr. Rau wanted to go there?

A. Yes, sir.

The Court: Did you have a chauffeur?

(Testimony of Betty Dorsey.)

The Witness: No, sir. I drove from the time I went to work for him.

The Court: You drove?

The Witness: Yes, sir. I had to do all the driving?

Q. (By Mr. Gardner): Now, while he was out at the home, at his home in 1946, I believe you stated about the spring of the year; was that correct?

A. I think so. I am not positive, that is a long time.

Q. Well, it surely is, and you are doing very well. [610] But when he did move out to this home, did he spend most of his time at the home, or down at the Southern Hotel? A. At the home.

Q. At home? A. Yes, sir.

Q. And how much time a day would you estimate he spent at the hotel?

A. You would just about get him up there and you would have to take him back.

Q. Was he suffering from intoxication during this period, Mrs. Dorsey?

A. Well, he wasn't suffering from intoxication. What I mean, he was suffering for the simple reason that he had drank so much, then you had to give him so much liquor all the time.

Q. You had to give him so much liquor?

A. Yes, sir.

Q. Were you furnishing that to him?

A. I had to give him some each day to keep him, not make him drunk, but to keep him going

Q. In other words, he wasn't drunk then during

(Testimony of Betty Dorsey.)

this period then, was he? You were rationing his liquor, weren't you?

Mr. Simpson: What period is this now?

Mr. Gardner: This is in 1946 after he moved out to the [611] home and she moved with him.

The Witness: Well, he would be, sometimes he would get pretty intoxicated out home.

Q. (By Mr. Gardner): How would he get intoxicated, if you were rationing his liquor for him?

A. You just had to give him it to him; if he wanted a drink, I would give it to him.

Q. Were you making him intoxicated, Mrs. Dorsey?

A. No, sir, I was not, because I had to work too hard to clean up after him.

Q. But you were attempting to keep him from becoming intoxicated, weren't you?

A. Yes, sir.

Q. And I believe you testified that you gave him just enough to keep him going?

A. Some days one little drink would knock him for a loop. He was weak and that.

Q. During this period, at least you attempted to keep him from becoming intoxicated, didn't you?

A. Yes, sir.

Q. And you were successful to an extent, weren't you, Miss Dorsey?

A. To an extent.

The Court: How much liquor did he drink; do you have [612] any recollection as to the amount that he drank over a period of one day?

A. I never kept, your Honor, I never would

(Testimony of Betty Dorsey.)

keep a track of it, but at least in 24 hours it would be a fifth that he would consume, easy, because I had to be up nights with him, and in fact, I slept right in the room where I could take care of him.

The Court: Were those exceptional days or was that the usual amount of liquor he drank?

The Witness: Well, it was days one way and days another way.

Q. (By Mr. Gardner): Now, going on over into 1947, Miss Dorsey, you were with him during that period of time, too, were you not, and did this same condition prevail, that is, he would get up in the morning? A. Yes, sir.

Q. And you would put him in the car and take him down to the Southern Hotel?

A. I would get him up in the morning and bathe him, and clean him and dress him. He never could dress himself. I dressed him from the time I went to work for him, and I would get his breakfast and then oh, around, maybe 11:00 o'clock, maybe he would go uptown.

Q. You would go uptown because Mr. Rau wanted to go [613] uptown, wouldn't he, and you would go to the Southern Hotel? A. Yes, sir.

Q. And this happened almost every day during 1947, didn't it, up until the time the hotel was demolished?

A. Well, I don't know every day or not; I don't remember.

Q. Was it almost a daily occurrence, do you remember?

(Testimony of Betty Dorsey.)

A. It was quite often. I am going to say it that way.

Q. All right. Did Mr. Webb ever come out to this residence of Mr. Rau's during the year 1947?

A. Yes, sir.

Q. Rather frequently?

A. No, sir. I would invite them out to eat.

Q. I see. Sort of a social situation?

A. Yes, sir.

Q. Did he ever call out there to discuss business with Mr. Rau that you know of?

A. Not that I know of.

Q. Not that you know of. In fact, all their business was discussed down at the hotel, as far as you know; is that correct?

A. If there was any business discussed, it was.

Q. It was discussed at the hotel. You didn't [614] stay with him while he was in the hotel, did you Miss Dorsey? A. No.

Q. That applies to——

A. Once in a while I would go in and stay until he was ready to go. He wouldn't be gone long and he would want to go home.

Q. The general practice when you took him down to the hotel, was let him out and wander around and do what he wanted to?

A. That is all I could do.

Q. And you weren't with him, in the hotel?

A. You mean wandering around with him?

Q. Yes. A. No, sir.

Q. And you don't know whether or not he was

(Testimony of Betty Dorsey.)

discussing business during this time, or not, do you?

A. No, sir.

Q. He could well have been discussing business, couldn't he, Miss Dorsey?

A. I don't know anything about that, sir.

Q. How much were you paid when you first, you were first employed in 1945, Miss Dorsey?

A. Well, it was funny. He paid me \$25 a week.

Q. And who did you reach this agreement with, Mr. Rau? [615]

A. Mr. Rau.

Q. You talked it over with Mr. Rau?

A. That is the only one to talk to.

Q. Now, did he seem to know what he was talking about when he started talking about \$25?

A. No, because he raised my salary in several weeks.

Q. Raised it to how much? A. To \$35.

Q. To \$35? A. Yes, sir.

Q. Did he state that he was satisfied with your services? A. Very much so.

Q. Very much so, and that is the reason he raised it; is that correct, Miss Dorsey?

A. I think that was it.

Q. At least he seemed to know the value of a dollar as far as your services were concerned, didn't he? A. I think, I hope.

Q. Now, how did he pay you?

A. Well, at that—I don't—I was trying to recollect. I think he paid by check.

Q. You think he paid by check. Now, did he instruct Mr. Webb to pay you?

(Testimony of Betty Dorsey.)

A. I don't know. I get my check and that is all [616] I know.

Q. Who gave you the check? A. Mr. Rau.

Q. Mr. Rau gave it to you, personally?

A. Yes, sir.

Q. And did you get the same amount, that is \$35 a week, throughout the remainder of your employment with him?

A. No. In the latter years, and I don't know when they raised my salary to \$50 a week.

Q. Who do you mean by "they"?

A. I don't know who did it. It was raised.

Q. And Mr. Rau started giving you a check in the amount of \$50; is that right?

A. Well, Mr. Rau didn't give it to me. Then it was given to me through the bookkeeper, bank, or something.

Q. This was near the time of his death?

A. Yes, sir.

Q. And up until that time you received \$35 a week? A. Yes, sir.

Q. Now, didn't you have any vacations during this period? A. No, sir, I did not.

Q. Do you have any family that you would visit?

A. No, sir. I am a woman by myself. [617]

Q. I see. And in other words, your sole thought and care during all these years was Mr. Rau, wasn't it? A. Yes, sir.

Q. Did you become rather fond of Mr. Rau; I mean, as a patient?

(Testimony of Betty Dorsey.)

A. You can't take care of a baby and not care for it. It is the same way with old people.

Q. You did care very much for Mr. Rau, didn't you?

A. No. I can't say that I cared a lot for him. I felt sorry for him and I will say it that way. He was helpless. He couldn't do anything for himself.

Q. Now, did you become acquainted with his family?

A. Well, yes. You can't help but become familiar with the family.

Q. When did you first become familiar with, say for example, Mr. Rau's son, Rau, Jr.?

A. Well, up at the hotel there, he came to see his father.

Mr. Simpson: If your Honor please, this definitely goes beyond the scope of the direct examination of this witness. I don't know that it is material to the inquiry before the Court, in any way. I think it is irrelevant and also goes beyond the scope of the direct examination.

Mr. Gardner: I would like to see what the relationship is that exists here, your Honor. This is vital testimony [618] and I would like to see whether or not there is any possible prejudice one way or another. I think I am entitled to interrogate into that.

Mr. Simpson: I think that the witness testified only with respect to the care that she gave Mr. Rau, Sr. And not with respect to whether or not she dis-

(Testimony of Betty Dorsey.)

liked or liked, or loved or hated anybody in the family, or any of his friends.

There is no question of whether or not she took care of this man.

The Court: I will allow Counsel reasonable latitude.

Mr. Gardner: Thank you, your Honor.

Q. (By Mr. Gardner): Now, when did you first meet Mr. Rau, Jr.?

A. Oh, I met Mr. Rau, Jr., there in the hotel, but not to know, not to speak to him or anything. But to really know him, or see him, was when he came to see his father there in the hotel.

Q. In the hotel, and became acquainted with him, at that time, didn't you? A. And his wife.

Q. With him and his wife. Did you like him?

Mr. Simpson: If your Honor please, now this is something that I feel that I must object to, whether or not this witness liked anybody. I don't get the significance [619] of it. I certainly didn't ask her on direct examination whether she liked or disliked anybody, or any member of Mr. Rau's family, or in-laws. That could go on *ad infinitum into cousins*, nieces, and how this can be helpful to this inquiry, I don't understand.

The Court: Counsel is entitled to explore the question of whether the witness might be prejudiced, and as I said before, within reasonable limits I will permit him to do so.

You may continue.

Mr. Gardner: Thank you, your Honor.

(Testimony of Betty Dorsey.)

Q. (By Mr. Gardner): Would you answer the question, please? A. I don't remember.

Mr. Gardner: Would you read the question again, please?

(Question read.)

The Witness: Well, God put us on this earth to like everybody.

Q. (By Mr. Gardner): Do you consider Mr. and Mrs. Rau, Jr., friends of yours, right now?

A. Well, I don't know. As far as I know, they are.

Q. You saw them rather frequently during these years, too, didn't you, Mrs. Dorsey? [620]

A. Not too frequently.

Q. How often would they come to visit Mr. Rau, Sr., during the years 1945, '46, '47, '8, '9, and '50?

A. I will not try to answer that, sir, because I cannot.

Q. Was it once a year, twice a year?

A. It was more than that, but how many times I don't know.

Q. Was it rather frequently?

A. No. I don't think it was. If I remember right—now, I am answering to something I am not positive.

Q. Well, that is all right. It is hard to remember, I realize that.

Now, you state that you have no family of your own, didn't you, Mrs. Dorsey?

A. No, I am by myself, sir.

(Testimony of Betty Dorsey.)

Q. All by yourself? A. Been for years.

Q. And in effect, you just sort of adopted the Rau family, didn't you?

A. When you are taking care of sick—may I answer it this way—you can't help but form a feeling for your patient and their family.

Q. And for these years, 1945 on up to the time Mr. Rau died, they were your family, weren't they, Miss Dorsey? [621] A. Yes, sir, they were.

Q. In fact, were you remembered in Mr. Rau's will?

Mr. Simpson: Object, your Honor. That goes beyond the scope of the direct examination.

The Court: The witness may answer.

The Witness: Yes, I was, but I didn't know it until after his death.

Q. (By Mr. Gardner): But you were remembered along with the other members of the family, weren't you, Mrs. Dorsey? A. Yes, sir.

Mr. Gardner: No further questions, your Honor.

Mr. Simpson: I have no questions, your Honor.

The Court: You may step down.

The Witness: Thank you.

(Witness excused.)

Mr. Simpson: If your Honor please, the Petitioner rests. [622]

* * *

WALTER SLATER

called by and in behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you be seated and state your name and your address, please?

The Witness: My name is Walter Slater; my address is 830 Laguna Road, Pasadena, California.

The Clerk: Thank you.

Direct Examination

By Mr. Werdel:

Q. What is your present business, Mr. Slater?

A. I am presently an officer with Cook Company, Equipment Company.

Q. How long have you been so employed?

A. Since the spring of 1954.

Q. Directing your attention to the year 1946 and 1947, is it true that at that time you were a revenue agent for the Bureau of Internal Revenue?

A. That is correct.

Q. Where was your position of duty at that time? A. In Los Angeles.

Q. In your capacity as revenue agent, were you instructed to examine the federal income tax returns of Walter F. Rau, Sr., of Bakersfield, California, for the years 1942, 1943 and 1944? [630]

A. I made examinations of Mr. Rau's returns in Bakersfield, and I'm quite sure those are the years, yes.

(Testimony of Walter Slater.)

Q. Was this examination performed at Mr. Rau's place of business in Bakersfield?

A. Yes, they were.

Q. What was—was that at the Southern Hotel?

A. That's correct.

Q. Do you recall what month of what particular year you made the examination?

A. I have had an opportunity to review the reports that I prepared, and I'm quite sure from the review of those papers that the examination was made in the fall of 1946.

Q. Did these records include the business known as the French Cafe? A. That's correct.

Q. You have examined the exhibits that have been placed in evidence in this case, have you not, this morning?

A. I have examined the reports that are prepared at that time.

Q. Based upon that examination and your recollection, can you tell us whether the system of book-keeping was a double entry system?

A. To the best of my recollection I think, and as these are all of the books and records which I examined at that time, I would say they were on a cash basis, single [631] entry system.

Q. A single entry system? And on a cash basis for the purpose of determining income and loss for return purposes, is that correct?

A. That is correct.

Q. Were there any control accounts that you saw at the time of your examination?

(Testimony of Walter Slater.)

A. It is rather hard for me to recall at the time, but in reviewing the report and the books this morning, I would say that there was no control accounts.

Q. Could you as an experienced revenue agent examine the checks, stubs, and determine loss and gain of any of Mr. Rau's business if any?

A. I don't believe I understand that question.

Q. Could you just examine the check stubs, or the checks in the records that were supplied to you and determine gain or loss in any of Mr. Rau's businesses?

A. No, I don't think so.

Q. Could you do so by examining the books of accounts without control accounts?

A. In Mr. Rau's case?

Q. Yes. In any of his particular businesses on any particular date, did you look at them and determine loss or gain?

A. I suppose it could be done. I recall that [632] I had considerable difficulty in examining the books and reconciling the books to the returns, but——

Q. Do you recall how many days you spent in your examination?

A. No, but I would imagine it would be four or five days. That would be the total time that I spent on a case.

Q. Well, in your opinion, were Mr. Rau's books and records adequate for the purposes of determining income and expenses?

A. In my opinion, no. I had, as I say, I had considerable trouble in examining the books and records for the purpose of verifying the returns; and I am

(Testimony of Walter Slater.)

not sure that even upon the conclusion of my examination that I had made what would be, what could be said a fully satisfactory examination of the books and records to verify the return.

Q. When you made the income tax review for the years '42, '43 and '44 for Mr. Rau, did you consult Mr. Rau's bookkeeper during the course of your examination? A. Yes, I did.

Q. Do you recall what her name was?

A. It was a Miss Goldstein.

Q. How often did you have discussions with her regarding the books and records during your investigation?

A. To the best of my recollection I was at this place of business, I would say two or three days at a minimum and each day I would discuss aspects of the return or the [633] books.

Q. Were these discussions held there at the Southern Hotel? A. That is correct.

Q. Did you inform Miss Goldstein that you were a revenue agent for the Federal Government?

A. Yes, I did.

Q. Did you ask her for all the books and records?

A. That is correct.

Q. Did she tell you that she had supplied you with all of the books and records?

A. I don't recall her making any statements such as that, but I would normally in examination ask for all books and records to support the return.

Q. Did Miss Goldstein co-operate with you in

(Testimony of Walter Slater.)

assisting you in the examination of the books and records?

A. Miss Goldstein provided the records that I examined. I didn't feel she was particularly cooperative as a representative of Mr. Rau.

Q. Will you explain your answer?

A. There were many questions in the examination of the books for the purpose of verifying the return, the income and expenses, and when questions were asked of Miss Goldstein regarding the books and records for the returns, she was not very responsive, nor helpful. [634]

Q. I show you what is Petitioner's Exhibit 20 in this case and ask you to examine that?

A. Are all these substantially the same in form?

Q. Yes.

I asked you to review them before the hearing this morning. I now direct your attention to the fact that those purport to be daily cash sheets for the year 1943 of the French Cafe representing what the particular person in charge of the cash register for the particular shift would take off the top and certain expenditures that were noted and made for the various days that they designate.

I ask you if that was part of the records that were given to you by Miss Goldstein?

A. I do not recall examining these records, no.

Q. I direct your attention to the fact that on all of these sheets there are notations on the bottom and on the side with certain amounts taken off the top and ask you if you recall whether or not those figures

(Testimony of Walter Slater.)

were on any records that were supplied to you by Miss Goldstein?

A. Could you identify of what you are speaking of here?

Mr. Werdel: If the Court please, some of these were particularly identified at the hearings, and I don't recall which they were at the present [635] time.

Q. (By Mr. Werdel): Directing your attention to the first sheet on Exhibit 20, it shows the receipts purportedly and evidenced by the tape on the particular date of \$384.70, and that the total of \$129 was paid out in cash leaving the balance of \$283.86, and that thereafter there is \$10 deducted showing a balance of \$273.86; and that there was apparently put back in \$33.35, and there was banked a total of \$307.21.

I ask you if you ever saw the figure of \$10 being subtracted without evidencing any cost on any daily slip?

A. I have no recollection of seeing these records, nor do I have any recollection of any so-called deduction of \$10.

Q. I call your attention to some of these on week end which show \$100 or more taken off the top. I assume that you didn't see any such entries either?

A. Not to my recollection.

The Court: You have no recollection of having seen these sheets which comprise Exhibit 20?

The Witness: I have no recollection of seeing the sheets.

(Testimony of Walter Slater.)

Q. (By Mr. Werdel): I show you Petitioner's Exhibit 21 purporting to be the same type of sheet for the year 1944 in connection with the same business, and I ask you if your answer would be the same in connection with that exhibit? [636]

A. Yes.

Q. That you don't recall having seen it?

A. My answer would be the same.

Q. Now, I show you Petitioner's Exhibit 27 purporting to be a copy of the report made by you after the examination that you have been discussing for the years 1942, 1943, and 1944, and I ask you if that is a copy of your report if you recognize it?

A. Yes, I do.

Q. I direct your attention to the fact that it is dated in late 1947, and I ask you if you believe—

Mr. Werdel: Withdraw the question.

Q. (By Mr. Werdel): That particular report was not prepared by you, is that correct? I mean, the typing of it was not done by you.

A. No, I did not type it. The schedules which are attached computing the tax and the depreciation schedules were prepared by me.

Q. Now, you have testified that your examination took place in the latter part of 1946, and I direct your attention to the fact that that report is dated November, 1947.

A. I am not positive as to when I made the examination, but from reviewing the consent form which was signed [637] by Mr. Rau which as I recall was dated in 1946, I am satisfied in my mind that I

(Testimony of Walter Slater.)

completed the examination in the fall of 1946, and prepared the report in November or December.

That date on the report is the date that it is mailed from the revenue agent's office to the taxpayer. It is not the date that I complete my examination.

Q. Now, after you had made your study for the Southern Hotel for the years we have discussed, did you discuss the results with Mr. Rau?

A. Yes, I did.

Q. I mean, Mr. Rau, Senior.

A. The taxpayer, yes, I did.

Q. Who was present when you discussed the results?

A. I am quite sure that I had at least two discussions with Mr. Rau. I had a discussion at the commencement of the examination to advise him who I was, what years I was going to examine. I had a final discussion with Mr. Rau at the time I had completed my report at which time I advised him of the adjustments to income and the change in tax as a result of my examination.

Q. Did you have that discussion with him alone without others present?

A. No, I did not. Mr. Rau was in bed during the entire time of my examination.

Q. And was—— [638]

A. I believe he was in bed during the entire time. At least he was confined to the Southern Hotel, and I was very concerned about Mr. Rau's health, and I insisted on either a doctor or a nurse being present

(Testimony of Walter Slater.)

at the time I presented to him the final results of my examination.

Q. Do you know Miss Betty Dorsey, the nurse of Mr. Rau?

A. I don't recall the nurse's name.

Q. Was a nurse present? A. Yes.

Q. Was Rose Goldstein present?

A. That I cannot be sure of.

Q. That discussion was held in his room at the Southern Hotel, I take it? A. That's correct.

Q. Did you make any observation of his mental condition at that time, as a lay person; was he able to go over the records with you, was his physical and mental condition such that he could? A. Yes.

Q. Now, based upon your knowledge of the physical and mental condition of Mr. Rau, do you believe he was able to understand his business condition by examining his books and records?

A. Whether or not Mr. Rau would be able to understand [639] his business condition?

Q. Yes. Would he be able to do the things to determine gain or loss from the records of the book-keeper Miss Goldstein?

A. Oh, I assume that he would be able to.

Q. You do not know, is that your answer?

A. No, I wouldn't know.

Q. Do you know who set up the books, Mr. Slater? A. No, I do not.

Q. Did you make any determinations so as to establish an opinion in your own mind as to whether

(Testimony of Walter Slater.)

or not Mr. Rau left the management of his business to his employees because of his physical condition?

Mr. Schessler: I object to that, your Honor, on the grounds that this is a conclusion of the witness, that he wouldn't have any opinion. He was there for the purpose of examining the books and records. He was not there for any other purpose. I feel that that would be an improper question.

The Court: If the witness knows, he may answer. I don't want any conjecture.

Mr. Werdel: That is the question I asked him, if he knows.

The Court: If he knows, he may answer. He may not base his answer on conjecture. [640]

The Witness: I would not know.

Q. (By Mr. Werdel): Now, directing your attention to Exhibit 27, it is now in front of you, I ask you if in the preparation of the material on which the report was made whether you found any evidence that would justify recommendation of fraud in connection with the years 1942, 1943 and 1944, when you made your examination?

A. No.

Mr. Werdel: That is all.

(Testimony of Walter Slater.)

Cross-Examination

By Mr. Schessler:

Q. Mr. Slater, when you went to Bakersfield to examine this case, this taxpayer, did you have any other returns or were you just up there on this one examination?

A. No. I was assigned to Bakersfield from the Los Angeles office with several returns to examine.

Q. Several. Do you mean three or four?

A. No. It would be considerably more than that. I would say it would be most likely 25 or 30.

Q. How long were you in Bakersfield, Mr. Slater?

A. To the best of my recollection it was 60 days. It was a 60 day assignment from Los Angeles.

Q. Were you able to complete all of these returns while you were in Bakersfield? [641]

A. Not all of them.

Q. Were you pressed for time? A. Yes.

Q. Could we take it from that, that you were in a hurry to get through your examination or didn't perhaps go into them as thoroughly as you might have if you didn't have so many?

A. I think that is true.

Q. Now, I believe you stated that you had four or five days on this examination?

A. To the best of my recollection, that is correct.

Q. Did that include field time and report writing or just what was that?

(Testimony of Walter Slater.)

A. I do not think that I would have spent that amount of time examining the books and records of the taxpayer. It would be most likely two, two, to three days, total time.

Q. How many examinations of this taxpayer did you make? A. How many examinations?

Q. Yes. Did you make another examination, or is this examination that we are talking about that you have in front of you the only one?

A. That is the only examination that I made to my recollection.

Q. Now, where was Miss Goldstein when you were in [642] the hotel examining the books and records in relation to your position?

A. As I recall Miss Goldstein had a desk or office in the lobby, and there was a sign either on her desk or maybe it was on the outside of the hotel identifying Miss Goldstein as a Notary Public, and a person who prepared income tax returns.

She was in the lobby of the hotel to the best of my recollection.

Q. Where were you?

A. I worked in her office part of the time and in, I believe, they also had an accounting office or some facilities where they kept their books and records.

Q. You weren't at Miss Goldstein's desk when you were doing all this examining?

A. Not during the entire period of the examination.

Q. You stated that you saw Mr. Rau during that examination approximately two times?

(Testimony of Walter Slater.)

A. To the best of my recollection it would be twice, yes. It might have been more. I am not sure.

Q. Is it possible that you could have seen him more than twice? A. Yes.

Q. Where was Mr. Rau at the times that you can recall seeing him? [643]

A. He was confined to his room in the hotel.

Q. Was he able to move around in his room?

A. Possibly he was up once during the, or he was up out of bed during one of my visits there. I was concerned about Mr. Rau's health and the results of this examination on his health, and I think he might have been up out of bed once, but the other time I think he was confined to his bed.

Q. Do you recall talking to Mr. Rau?

A. Oh, yes.

Q. Did he understand what you were doing?

A. Yes.

Q. Did he know why you were there?

A. Yes, I'm sure he did.

Q. Would you explain what you mean how you are sure? You say you are sure he did understand, did you have a conversation with him or——

A. Most taxpayers recognize revenue agents, particularly when they identify themselves and they are concerned with the results of their review of the return and books and records, and Mr. Rau——

Q. And Mr. Rau?

A. And Mr. Rau was concerned as most other taxpayers.

Q. Now, I believe you testified as to Mr. Rau's

(Testimony of Walter Slater.)

physical condition. Did you at any time during [644] your examination notice Mr. Rau drinking?

A. No.

Q. And he was under the influence of an alcoholic during your discussions with him?

A. Certainly not. In my opinion he was not.

Q. Did you discuss your findings with anyone besides Mr. Rau?

A. I am not sure whether an attorney or accountant was called in by Mr. Rau at the conclusion of the examination or not. I do not recall.

Q. Do you recall whether Miss Goldstein was present at the time you discussed your conclusions with Mr. Rau?

A. That I could not be sure of.

Q. How long were you in Mr. Rau's room when you were talking with him; do you have any recollection?

A. Well, the first meeting with Mr. Rau when I advised him as to the purpose of my examining his books and records would have been a very short meeting; but the meeting with Mr. Rau at the time I advised him as to the results of my examination, I don't recall precisely, but I would imagine it would be an hour or two hours.

Q. In your examination of the tax returns for these years, what books and records exactly did you check, Mr. Slater?

A. To the best of my recollection it would have been [645] the cash journals, receipts and disburse-

(Testimony of Walter Slater.)

ments. I had considerable difficulty, as I had mentioned before, reconciling the books with the returns.

Q. In reference to the exhibits that you checked a minute ago, I believe they are exhibits 20 and 21, you stated that you didn't recall whether you examined those; is that correct?

A. I do not recall seeing any such records in connection with my examination, no.

Certainly they were not in looseleaf form like that. I don't recall reviewing such records at that time. I do remember there being a form of cash journal in bound form.

Q. That is all you can remember, some form of cash journal?

A. That is all I can remember, and I don't recall too much about that.

Q. That is hazy recollection?

A. That is correct.

Mr. Schessler: That is all. Thank you, Mr. Slater.

Mr. Werdel: If the Court please, I would just like to ask one more question.

Redirect Examination

By Mr. Werdel:

Q. Mr. Slater, was Rose Goldstein ever in the room [646] when you discussed any preliminary discussions rather that you had with Mr. Rau?

A. Rose?

Q. Was Rose Goldstein present when you had

(Testimony of Walter Slater.)

ever had a conversation with Mr. Rau in the course of this examination?

A. I can't be sure, but I assume she was at some time.

Q. Did you discuss the results of this examination with Rose Goldstein?

A. I can't say for sure whether I did or not.

Q. Mr. Slater, I take it it is true that some time in 1947, or at the close of your study and report, Mr. Rau did bring in a different bookkeeper, is that correct?

A. That I cannot be sure of. It was some time ago.

Q. Well——

A. I testified I think I completed this examination at the close of 1946.

Q. Yes?

A. I think the date of this report is not correct. I think it should be dated December, 1946.

Mr. Werdel: Well, perhaps I can state this to the Court. During one of the days that I was absent when the hearing was on, I understand that when Mr. Reed because of the death of a member of his family in the east or a serious [647] illness, was excused and at the time it was raised with regard to a stipulation that Mr. Reed prepared the 1947 return that is in evidence, and that some discussion was had upon the subject of where he derived his information for the 1947 return.

I have told Mr. Gardner that while I know personally that Mr. Reed made the 1947 return, I

(Testimony of Walter Slater.)

wasn't here for the conversations, and I would be perfectly willing at this time to agree that he can prepare a stipulation that it was—it was intended at that time for Mr. Simpson's signature with regard to this subject.

Mr. Schessler: Your Honor, may I say something on this matter?

The Court: Does this have anything to do with this witness' testimony?

Mr. Schessler: No.

Mr. Werdel: I am through.

The Court: Are both parties completed in their examination of this witness?

Mr. Schessler: We have no further questions at this point, your Honor.

Mr. Werdel: No further questions.

The Court: You may step down, Mr. Slater.

(Witness excused.) [648]

* * *

Received and Filed July 25, 1958.

[Title of Tax Court and Cause.]

CERTIFICATE

I, Howard P. Locke, Clerk of the Tax Court of the United States, do hereby certify that the docu-

ments submitted under this certificate, 1 to 41, inclusive, as called for by the Designation of Contents of Record on Review, are the original documents on file in my office, excepting the original exhibits which are separately certified, and a true copy of the docket entries as they appear in the official docket of my office, in the case docketed at the above number, in which the petitioner in this Court has filed a petition for review.

In testimony whereof, I hereunto set my hand and affix the seal of the Tax Court of the United States, at Washington, in the District of Columbia, this 15th day of March, 1960.

[Seal] /s/ HOWARD P. LOCKE,
Clerk of the Court.

[Endorsed]: No. 16823. United States Court of Appeals for the Ninth Circuit. Estate of Walter F. Rau, Sr., Deceased, Raymond J. Shorb, Administrator With the Will Annexed, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petition to Review a Decision of The Tax Court of the United States.

Filed and Docketed: March 21, 1960.

/s/ FRANK H. SCHMID,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 16823

ESTATE OF WALTER F. RAU, SR., Deceased,
RAYMOND J. SHORB, Administrator With
the Will Annexed,

Petitioner on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent on Review.

STATEMENT OF POINTS RELIED UPON

Pursuant to Rule 17 Sub-paragraph 5 of the Rules of the Court, the Petitioner sets forth the points upon which it intends to rely:

(1) The penalty provided for under Section 293(b) I.R.C. 1939, does not survive the death of a decedent when death occurred prior to the imposition thereof.

(2) The net worth method represents the only reasonable basis upon which decedent's income can be properly determined.

(3) The evidence presented by Respondent fails to support its allegation of fraud within the meaning of Section 293(b) I.R.C. 1949.

(4) Under the rules of evidence, Respondent's witnesses have been impeached and discredited.

(5) The Statute of Limitations is a bar to the assessment and collection of any tax for the years 1942, 1943 and 1944.

/s/ ELLSWORTH T. SIMPSON,
Attorney for Petitioner on
Review.

Certificate of service attached.

[Endorsed]: Filed March 24, 1960.